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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

NO. .....

PEOPLE OF MICHIGAN,
Plaintiff-Appellee,

v.

WILLIAM STAFFORD, SR.,
Defendant-Appellant,
In Proper Person.

In Re: *Lower Court No. 18407*
Michigan Court of Appeals: *9401*
Michigan Supreme Court: *52980-1/2*

APPEAL TO THE UNITED STATES SUPREME COURT FROM A FINAL JUDGMENT RENDERED BY THE SUPREME COURT OF MICHIGAN

JURISDICTIONAL STATEMENT

CITATIONS TO OPINIONS BELOW

The judgment of the Michigan Supreme Court of Michigan is unreported and is presented in Appendix "A" attached hereto.

Other prior judgments on Appeal in this cause and likewise unreported are also included as appendices hereto.

After denial of the usual post-trial motion for new trial on the day of April 9, 1962 by Circuit Judge John W. Baker, Appeals follow:

a) Michigan Supreme Court #50381-1/2: denial entered June 3, 1963 (Appendix B, p. 27).

b) Michigan Court of Appeals #1228. Remanded to L.C. November 19, 1965 (Appendix C, p. 28).

c) L.C. upheld former decision Confession Voluntary December 20, 1965.

d) Michigan Court of Appeals upholds L.C. entered on July 18, 1966. #1800 (Appendix D, p. 30).

e) Petition for habeas corpus dismissed by Judge Fred Kaess of the Federal District Court Eastern District of Michigan entry #29442, Dec. 1/67 (Appendix E, p. 32).

f) Motion for new trial made in Genesee County Circuit Court, Judge John W. Baker, denied, entered on April 30, 1968 (Appendix F, p. 33).

g) Appeal of April 30, 1968 denial filed in Michigan Court of Appeals on May 22, 1968, and rejected without comment on May 27, 1968 (Appendix G, p. 34).

h) Appeal again made to the Supreme Court of Michigan. Entry of denial #52152-1/2 made on November 1, 1968.

i) Petition for habeas corpus again presented to the Federal District Court, Eastern District of Michigan with denial made on May 1, 1969, entry #32264 with reason given "State Remedies Not Exhausted" (Appendix H, p. 35).

j) Appeal of habeas corpus denial #32264 in the 6th Circuit Court of Appeals was denied, entry #19,736 was made on March 3, 1970, Upholding the District Court ruling of State Remedies not exhausted (Appendix I, p. 33).

k) Another Appeal was taken to the Michigan Court of Appeals, A denial #9401 was entered July 21, 1970 (Appendix J, p. 39).

l) Appeal of the Court of Appeals ruling in #9401 was taken in the Michigan Supreme Court where denial was made #52980-1/2 entry Oct. 27, 1970 (Appendix K, p. 41).

GROUNDS

Jurisdiction is invoked of the United States Supreme Court because of the failure of the State Courts of Michigan to confront and rule upon the several abuses of constitutional guarantees of the rights of the accused to a fair trial as alleged by the appellant and supported by proof to sustain.

Efforts on Appeal as shown by the wearisome multiplicity of the citations given, shows that Appeal measures in Michigan Courts are not "State Remedies" but a nit-picking morass of self-imposed technicalities designed to thwart rather than give relief as merit demands.

Appellant further believes that denial of a review by a State Court on the Constitutional issues involved is sufficient cause for a review on Appeal by the Supreme Court of the United States.

Appellant seeks Appeal under provisions of 28 U.S.C. Section 1257, and believes that 28 U.S.C. Sections 2103 and 2104 may also apply.

Appeal is sought on the judgment rendered by the Supreme Court and entered on October 27, 1970.

CASES RELIED UPON TO SUSTAIN JURISDICTION

Uveges v. Pennsylvania, 335 U.S. 437
McNabb v. United States, 318 U.S. 332
Mallory v. United States, 354 U.S. 449
Draper v. Washington, 372 U.S. 487
Gideon v. Wainwright, 372 U.S. 335
Faye v. Noia, 372 U.S. 391
Haynes v. Washington, 373 U.S. 503
Hamilton v. Alabama, 368 U.S. 52
Jackson v. Denno, 378 U.S. 376
Spano v. New York, 360 U.S. 315
Pointer v. Texas, 380 U.S. 400
Powell v. Alabama, 287 U.S. 45
White v. Maryland, 373 U.S. 59
Crawford v. Beto, 383 F.2d 604

VIOLATION OF FEDERAL STATUTES CITED IN SUPPORT OF JURISDICTION:

1) Federal Social Security Act, Section 207, Title II
2) Veterans Administration Rules and Regulations, Ch. 53, Sec. 3101, Title 38, at page 7219

The above named Federal Statutes were violated when the defendant, a veteran of World War I, and retired worker under Social Security was under duress, compelled to assign his pension benefits accruing in future payments under above statutes in order to pay the fee of a lawyer summarily appointed by the Court, and in which the defendant had no choice of lawyers given him.

SECTION 207, TITLE II, OF THE SOCIAL SECURITY ACT PROVIDES:

> "That the right of any person to any future payment under Title II of the Social Security Act shall not be transferable or assignable at law or in equity. Further, any money paid or payable or rights existing under the law shall not be subject to execution, levy, attachment, garnishment, or other legal process. The only exception made is that a levy for collecting delinquent Federal taxes may be made."

VETERANS RIGHTS LAWS AND REGULATIONS: CH. 53, SEC. 3101, TITLE 38, Page 7219, PROVIDES:

> "That payments of benefits due or to become due under any law administered by the Veterans Administration shall not be assignable or transferable except to the extent authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from claim of creditors, and shall not be liable to levy, or seizure by or under any legal process whatever, either before or after receipt by beneficiary."

QUESTIONS PRESENTED ON APPEAL

A) Was the defendant's right against self-incrimination as guaranteed by the Fifth Amendment violated when he was arrested by police when he was in an intoxicated condition and immediately subjected to prolonged, coercive interrogation while mentally incapable of contending for his right to a lawyer, or to remain silent if he wished?

B) Was the right of the defendant to representation by counsel as set forth in the Fourteenth Amendment

violated WHEN he was taken into the Flint City Court 24 hours after arrest, charged with murder, and had demanded a preliminary hearing and a Court-appointed lawyer to represent him, and was denied the lawyer although a hearing was given?

Further, was defendant's right to a fair trial jeopardized by a news item in the local paper of same day in which an account of the appearance in Court was given with the additional comment that the defendant had confessed the crime "according to the police"?

C) Was defendant deprived of his constitutional rights and due process of law WHEN compelled to go into a preliminary hearing without the representation by a lawyer; denied the right to represent self; denied the right to confront and cross-examine witnesses against him; denied the right to testify, or produce witnesses in his behalf?

D) Was defendant prejudicially deprived of adequate counsel at his coming trial WHEN, after two weeks of harassed effort to obtain a lawyer of his choice, and appearing in Circuit Court for arraignment for trial with the judge summarily appointing counsel, but only after defendant was pressed into agreeing to assign his federal pension checks accruing in future payments to pay his Court-appointed lawyer with such assignment a violation of Federal Statutes? Further, defendant was not allowed a choice in the appointment with the end result of being saddled with an inept, bungling, unethical lawyer who proved unfit to represent defendant in any capacity.

E) Was defendant's right to a fair trial further abused WHEN his lawyer knowingly permitted defendant to be deprived of an essential witness at the trial while

allowing the prosecutor to call a hostile witness who could find no sanction under law, and with the palpable intent to place defendant in a position of self-incrimination?

With the news media in reports of proceedings at the trial continuing to inform the public and the jury that defendant had previously confessed to the crime . . . "According to the police."

F) Have defendant-appellant's efforts on appeal been stymied by the overt prejudice existing in the comity chain of Michigan Courts because of an initial Application for Leave to Appeal filed in the Supreme Court of Michigan by appellant's former lawyer on April 25, 1963?

The Application was known to have been fraudulently conceived, and illegally executed, BECAUSE: Appellant had fired his lawyer 45 days prior to date of filing; had notified the Clerk of the Michigan Supreme Court of the fact, and requested said Clerk to not accept for the record anything that might be presented on said Appeal by appellant's former counsel, Jerome D. Winegarden.

G) Was the prejudice of the Michigan Courts further aroused WHEN a civil suit #4042 was filed in the Genesee County Michigan Circuit Court on November 20, 1964, in which the appellant as plaintiff, sued his former lawyer for return of all money paid him, and for which no acceptable service was rendered because of unethical conduct. Thereafter, requests for legal aid on Appeal were denied by the Court and personal efforts of appellant to provide his own counsel, were fruitless.

ON APPEAL: The lower Courts do not answer the questions presented.

APPELLANT: Says the answer should be YES to all questions.

CONCISE STATEMENT OF THE CASE

On Sunday morning, November 5, 1961 at around 11 o'clock, Mrs. Elaine Bencko called at the home of a neighbor, William Stafford, a 68 year old retired Chevrolet worker living alone at his home at 727 Fenton Rd., City of Flint, Michigan. Mrs. Bencko said she wanted to borrow his car.

Failing to get response to her knocks and calls at the front door, Mrs. Bencko then went to the rear door and repeated her knocking and calling without response. She then entered the house through the partly open rear door. She found her neighbor on a sofa in the living room apparently asleep. She tried to arouse him by shaking him and calling his name but failed to arouse him. Then preparing to leave via the front door and looked through the open door of an adjoining bedroom as she left, she saw a man and a woman lying on the bedroom floor. Resuming her effort to arouse the sleeper on the sofa without result, Mrs. Bencko became alarmed and called the police. Officers Savagaue and Storms responded in about 10 minutes. Also, at about the same time, William Stafford, Jr., a son of the appellant and was at the time, a Genessee County Deputy Sheriff and member of the Flint Township police department. The appellant had at the time showed a tendency to arouse himself, with the son trying to converse with him but getting no lucid replies.

At this time the officers put in a call to homicide for Lieut. Burke and Sergeant Thorpe and upon their arrival William Stafford, Jr. was sent from the room while Mrs. Bencko was allowed to remain. The available record is in conflict as to what actually transpired after younger Stafford left the room at the order of Lieut. Burke.

The record reveals that appellant was taken to police headquarters at 12:00 noon, and at 12:15 was subjected to prolonged interrogation during the afternoon until culminating in what police claimed to be a voluntary confession, when later evidence at the trial was such that the appellant was in no condition to assert his right to a lawyer, or to remain silent, if indeed he had been told of such rights by police.

APPEARANCE IN MUNICIPAL COURT:

Twenty-four hours later, on November 6th, 1961, appellant appeared before Judge Donald Freeman in City Court on a charge of murder. Appellant had never been in Court charged with crime before, so he took the advice of a fellow prisoner who advised him to "not enter a plea until advised by a lawyer; to demand a preliminary trial; to demand that the Court appoint counsel for the hearing."

Appellant did as instructed with the judge granting a hearing, but telling appellant "You'll get a lawyer after you're bound to Circuit Court. I remand you back to jail to await your hearing on November 15, 1961," whereupon appellant remained incommunicado during the nine days before said hearing. No transcript of proceedings was made available to appellant because Mrs. Deane Williams, Court Reporter, states that she was not present and there is no record of the pertinent dialog between a judge and a man charged with murder. However, another reporter

of the vilest sort was present. The same afternoon, the Flint Journal carried a blow by blow description of what purported to be the crime with the added statement, "According to the police."

INCOMMUNICADO STATUS:

Cornelia Stafford, wife of appellant states by affidavit that she tried to contact the appellant during the first week of his confinement in jail, in person, and by telephone, the officials at the jail telling her "no one is allowed to contact your husband." Likewise, Elzie Sullivan, a cousin of appellant, came from his home in Detroit to Flint, and as he states in his affidavit, "to render whatever aid he could to appellant, including trying to help with his lawyer problem."

Mrs. Stafford further states that on or about November 10, 1961 she sent attorney Bob Grimes, a Flint attorney, to the County Jail to find why her husband was held incommunicado. Attorney Grimes prevailed with the Sheriff, and visiting privileges were granted to her but she did not get to contact her husband until after the preliminary was held.

APPEARANCE ON A SECOND INDICTMENT:

On November 13, 1961, appellant appeared before Judge Freeman in Municipal Court on a second murder charge. The first one a week earlier the charge was for the murder of one William Howard, case #18408. Then came the second indictment on above date of November 13, 1961, was for the murder of one Barbara Mancour and assigned case #18407. This appearance being a blueprint of the first appearance with the appellant refusing to plead, and his request for a lawyer again denied him. As previously, no transcript is available on the second appearance.

AT THE PRELIMINARY HEARING ON NOVEMBER 15, 1961:

The 52-page transcript shows that the appellant, then the defendant at the time on a charge of murder, appeared in Court without a lawyer and requested to waive examination until he could get a lawyer and indicated that he did want an examination after he got a lawyer. The judge would not grant the request, saying, "That the people are entitled to a hearing if they desire and that is their wish at this time." There were no eye witnesses to the alleged crime and the witnesses against the accused were the four officers concerned with the arrest and Lieut. George Edwards of homicide who was the interrogator. The only incriminating evidence produced was what was purported to be a voluntary confession.

At the beginning of the hearing the defendant-appellant abruptly was admonished by City Judge Freeman thusly, "I do not think it to your advantage to conduct a cross-examination." And again, after the state had completed its testimony, Judge Freeman gave the accused another gem of advice. "This would be the time for you to present testimony in your behalf, but I don't think it would be to your benefit." The accused regarded such as orders inasmuch as Lieut. Edwards had told him in the beginning, "You will sit quiet, just like a bump on a log. You have made a statement to us, and you won't make another." The hearing ended with the statement "Bound to Circuit Court, date of arraignment November 20th."

At the above hearing it also developed that the accused was the victim of continued interrogation after he had appeared on the first charge on November 6th, and again after the second appearance on November 13th, the facts as admitted by Lieutenant Edwards at the preliminary.

Incommunicado status, and so-called voluntary confessions are the bugaboo of justice and go together like ham and eggs.

In *Uveges v. Pennsylvania*, 335 U.S. 437, the Court held that:

> "The holding of any person incommunicado counsel or parents is an insidious method of intimidation and tends to render a person plastic to police assertiveness and demands a trial of mental endurance under unlawful pressure."

McNabb v. United States, 318 U.S. 332:

> "*The record leaves no doubt that the questioning took place while in custody of the arresting officers and before any order of commitment was made.* Plainly *a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand* without making the Courts themselves *accomplices to wilful disobedience* to the law." [Emphasis added.]

Mallory v. United States, 354 U.S. 449:

> "The accused was not told of his rights to counsel or to a preliminary hearing examination before a magistrate nor was he told that he could keep silent or warned that anything he said could be used against him. *Not until after he had confessed was an attempt made to take him before a magistrate until the next day.*
>
> "The arrested person may be booked by police *but he is not to be taken to the police headquarters in order to carry out a process of inquiry that lends itself to geting support for the arrest and ultimately of his guilt.*" (See also, *Upshaw v. U.S.*)

Gideon v. Wainwright, 372 U.S. 332:

> "Asserted denial of due process is to be tested by an appraisal of the totality of the facts involved in a given case, that which may in one setting constitute a denial of fundamental fairness.
>
> "One of the facts at issue; representation by counsel it seems clear in the case of Gideon v. Wainwright that the accused must have a lawyer when requested and that he must not have one in name only, he must have assistance."

In *Hamilton v. Alabama*, 368 U.S. 368 at pages 54-55, the Court held:

> "Whatever may be the function and importance of arraignment in other jurisdictions, we have already said enough to show that in Alabama it is a critical stage in a criminal proceeding. Whatever happens here may affect the whole trial. Available defenses may be as irretrievably lost, if not asserted then and there as they are when an accused represented by an attorney waives the right for strategic purposes."

White v. Maryland, 373 U.S. 59, said the Court:

> "We repeat what we said in Hamilton v. Ala., supra, p. 55, that we do not stop to determine whether prejudice resulted: Only the presence of counsel could have enabled the accused to plead intelligently."

Pointer v. Texas, 380 U.S. 400. Again the right to counsel and to cross-examine witnesses was upheld when the Court said:

> "We hold in this case as we held in Hamilton v. Alabama and White v. Maryland. 'Such rights are fundamental and essential to a fair trial and long established in Fed-

eral Court and under provisions of the Fourteenth Amendment, extended to the States.'"

See also *Powell v. Ala.*, 287 U.S. 45, and *Spano v. New York*, 360 U.S. 315.

ARRAIGNMENT FOR TRIAL IN CIRCUIT COURT

The first attempt at arraignment of defendant for trial was before the Hon. Donn Parker in the Genesee County Circuit Court on November 20, 1961, at which time the defendant-appellant gave a concise statement of his financial condition to-wit: Social Security $119.00; World War I soldiers pension $75.00; G.M.C. retirement $29.63; all pensions accruing in future monthly payments. Also, defendant stated that he was trying to retain Robert Grimes as defense attorney but had not completed the arrangements. Proceedings were adjourned for one week with the Judge saying that he would look into some statements made by the defendant.

At the next appearance one week later on November 27th, the Judge was impatient because defendant had not hired a lawyer. Whereupon, the prospective lawyer was called into court and stated to the Judge why the defendant had not been able to get his own lawyer. The lawyer, Bob Grimes, stated that he expected to get his fee from joint owned property, but the wife of the defendant with lifetime occupancy of the property had said that she would not sell or mortgage same in order to pay a lawyer's fee. Grimes further told the judge "I just don't see how Mr. Stafford can pay a lawyer."

The two weeks harassment was a needless imposition because the Judge himself had on the preceding month of October 9, 1961, presided in a suit for separate maintenance between the defendant and wife and was thoroughly

cognizant with defendant's finances. The Judge had made the home joint property with lifetime occupancy to the wife who was also awarded the amount of $65.00 monthly sustenance.

As Lawyer Grimes was leaving the room, Judge Parker summarily appointed attorney Jerome Winegarden as defendant's counsel at the coming trial. In a journal entry of said date, the Judge stated that the Court had found the defendant poor, and unable to pay his lawyer.

In the afternoon of said date, the Court-appointed lawyer, Winegarden, called on the defendant at the County Jail with a petition for him to sign in which the assets, including his future pension checks be assigned to the Friend of the Court to pay his court-appointed lawyer. The petition made no provision for paying the $65.00 monthly to defendant's wife and he refused to sign it. Whereupon, lawyer Winegarden left, but returned the next day, November 28th, with a petition which provided for paying the $65.00 monthly as formerly decreed, and with the admonition by Lawyer Winegarden, "The Judge said sign it, or you get no lawyer."

Defendant signed the petition with his lawyer administering the oath in the capacity of a notary public, and signed the jurat. The petition becoming a nullity under Michigan Statute Section 601.77, Volume 4 of the Compiled Laws of Michigan (1948):

> "It shall not be lawful for notaries public who are also attorneys and counselors at law to administer oaths in causes in which they may be personally engaged."

At this time defendant asked his court-appointed attorney to get a new preliminary hearing for him as he had indicated he would want at the former hearing. His lawyer

replied, "We could likely get it, but it won't do any good because your confession has hurt you."

DEPRIVED OF ESSENTIAL WITNESS AT TRIAL

About two weeks before the trial began on March 12, 1962, attorney Winegarden approached Cornelia Stafford, wife of defendant, and told her that two expert witnesses were needed at the trial, and unless she would pay their fees, her husband would be without their help. He stated that the State of Michigan should pay the witnesses, but had refused to do so. Under such duress, the wife agreed. The witnesses were to be Dr. Sid Conover, a specialist in alcoholism who had treated the defendant on four different occasions for alcoholism, and a psychiatrist, Dr. Jerome Fink, who was to testify on the effect of alcohol on human behavior. Defendant's lawyer did not contest the so-called voluntary confession, but entered a plea of temporary insanity induced by excessive drinking of alcoholic beverages.

Dr. Fink called at the Genesee County jail on Saturday, March 3, 1962 for the purpose of consultation and examination of defendant, but was denied his request "because it's visitors day" and he was told to come back later. Dr. Fink had other commitments and couldn't return before the trial, and notified Attorney Winegarden of the fact and for him to get another doctor. Then came Lawyer Winegarden informing both the defendant and wife that he could not get a local doctor in lieu of Dr. Fink, and the short time before trial did not allow getting an outside witness.

In the evening of March 15, 1962, a man called at the jail and identified himself to defendant as Dr. Raymond Jaarsma, a local psychiatrist, and that he had been sent to the jail by the prosecutor to examine the defendant. The defendant had previously been denied a like witness

in his behalf, and refused to grant Dr. Jaarsma's request. At the time the trial was in progress and the defense had rested its case. Yet, on November 20, 1962, the prosecutor called Dr. Jaarsma for a witness. The only testimony given by the doctor was that he had been sent to the jail by the prosecutor to examine the defendant who had refused to grant his request. Defense attorney, Winegarden, offered no objection to the witness, despite the fact that a Court Order as required by law, had not been issued for the said examination.

Michigan Court Rule #311 provides that a Court Order must issue:

> "The order for examination must be made upon good cause shown and upon notice to the person examined and to all parties, and shall specify the time, place, manner and scope of the examination, the person or persons by whom it is to be made, and shall provide that the attorney for the person examined may be present."

Callaghans Pleadings and Practice states the Law: VOL. 5, SECT. 37.108:

> "Information obtained through compulsory and non-voluntary examination has been held not disclosable and might well be regarded as a violation of principles excluding evidence illegally obtained, or as an invasion of the privilege against self-incrimination of the person examined."

TESTIMONY AT THE TRIAL

No eyewitnesses to the alleged crime were produced. The People based their charge on what purported to be a voluntary confession given to the police. A confession

the defendant was not allowed to challenge at his preliminary trial, and was not challenged by his lawyer at the trial. Officers Savageau, Storms, Thorpe, and Burke, who made the arrest, testified that they had questioned defendant in his home before taking him to headquarters and that he had admitted his guilt to them.

Sergeant Szabo and Lieut. Edwards of homicide testified that the defendant was subjected to four periods of interrogation immediately following his arrest, finally culminating in what was claimed to be a voluntary confession of guilt. Some of the officers testified that they could smell alcohol on the breath of the defendant, while others said he looked as if he might have had something to drink, etc., but all said that he appeared lucid enough for interrogation.

WITNESSES FOR THE DEFENSE;- Nine in number, established the fact that the defendant was a heavy drinker of intoxicating liquor and was seen under its effects almost daily. That they had observed him just prior to, and after, the alleged crime, and his actions indicated that he was under the influence of alcohol to a noticeable degree.

Ernest Harrison, a filling station attendant testified that the defendant bought a battery for his car at about 11 o'clock in the morning of Saturday, November 4, 1961, and while installing the battery he could smell alcohol on defendant's breath, and he appeared to be under the influence of liquor to a marked degree.

Floyd Kerry, owner of a garage near defendant's home testified that at 1 o'clock p.m. on said day he was engaged to repair the generator on defendant's car, and the defendant left he said "to get more whiskey." Mr. Kerry also testified that upon defendant's return to get his car in the late afternoon, he appeared too drunk to drive his car

home, but refused to allow Kerry to drive him home as he wanted to do for the safety of defendant and others.

Carney Hammond, a neighbor of defendant, hearing about the drunken condition, came to the defendant's home about 7:30 of the said day, and found him in such condition that he tried to get him to spend the night at his (Hammond's) home. The defendant would not agree, and Mr. Hammond returned to his home around 8 p.m. after getting a promise from defendant that he would not attempt to drive his car that night.

Mrs. Carrie Jenkins, a barmaid in Bob's Bar, located on Court Street in Flint, near the defendant's home, testified that defendant came into the bar around 8:30 or 9:00 o'clock on said Saturday night, and asked to be served a drink of whiskey, which she refused to do, telling the defendant, "You have enough to drink already." Whereupon defendant and William Howard left the bar shortly afterward with the statement by defendant, "I'll go where I can get something to drink." The defendant and William Howard returned to Bob's Bar between 1:30 and 2:00 o'clock then Sunday morning, November 5th, which was close to the time the murder was alleged to be committed. Mrs. Jenkins testified that at that time she saw no change in defendant's condition and again refused to serve him whiskey as she had also done some four hours earlier. In his testimony Ernest Harrison had also seen the defendant at 7:30 on Sunday morning which was after the alleged crime, and the defendant, ordinarily a good driver, was handling his car so erratically that Mr. Harrison's conclusion was that the defendant was drunk.

Material Witness, Elaine Bencko, who had discovered the dead people and called the police was called to testify at the trial on March 13, 1962. In her morning testimony

she testified that she was unable to get the defendant awake, but after he had aroused himself, she said he told police that he shot the people. When cross-examined she stated that the defendant upon waking up, appeared to be in a fog or something. At her appearance again in the afternoon of said day, Mrs. Bencko was pressed more closely about defendant's condition at the time the police appeared and she stated "HE WAS DRUNK."

William Stafford, Jr., present at the time police took the defendant from his home testified also that he was drunk.

Paul Gay, and his wife Lucy, next door neighbors of defendant, were both observers of the defendant when the police took him from his home, and both testified that the defendant appeared to be noticeably affected by alcohol.

UNETHICAL CONDUCT OF DEFENDANT'S LAWYER ON APPEAL:

The unethical and inefficient conduct of defendant's lawyer manifest at the trial continued in post-trial procedures. The last of the impositions on the defendant by a Court order of November 28, 1961 when on April 6, 1962 he tendered his three pension checks for said month to his attorney, Winegarden, the total amount of said checks, $223.76. Although bound by said court order to deposit the checks in custody of the Friend of the Court, he did not do so. Instead, the canceled checks show that Lawyer Winegarden personally endorsed and accepted payment from the Citizens Bank of Flint, Michigan, with the record of the Friend of the Court showing that the money was not paid for credit, and $142.00 of defendant's obligations payment of which was sanctioned by said Court order, remained unpaid.

On April 16, 1962, defendant left for Jackson prison to begin his term of life imprisonment. On said day, he was approached by his lawyer Winegarden who said "Your only remedy now is to appeal to the State Supreme Court which will not take over three or four months at most. In the meantime you can send me your Social Security check each month until the appeal is acted upon."

The defendant started making monthly payments of $115.00 in May of 1962, and continuing through October 1962. In the meantime, receiving false and misleading information on progress of the appeal.

On October 28, 1962, defendant enclosed a letter with his check to his lawyer Winegarden, asking him for a concise report on the appeal. No answer was made to the letter. One month later, on November 29, 1962, another letter was sent to Lawyer Winegarden, in which the request for pertinent information was again made. Defendant received an immediate answer telling him that his appeal had already been sent to the Court about three weeks ago, and defendant would be notified when the Court had made a ruling.

After waiting for more than three months without further information, defendant wrote a letter of inquiry to the Clerk of the Michigan Supreme Court. The letter dated February 13, 1963 asked about the status of the appeal. On February 19, 1963, Clerk Donald Winters of said Court informed defendant that nothing pertaining to his case had been filed. Whereupon, defendant writes a letter to his lawyer, Winegarden, firing him, and another letter to Clerk Winters notifying him of the fact, and requested that he not accept anything for the record which Lawyer Winegarden might present on said appeal. Defendant then contacted Attorney Robert Grimes, a Flint attorney,

asking him to investigate the matter. On April 17, 1963, Attorney Grimes reported by letter to the defendant that he had contacted Clerk Donald Winters in regard to the appeal, and Clerk Winters had informed that there had been nothing filed. It was then that defendant's lawyer, Winegarden, got busy and presented an Application for Leave to Appeal that was accepted by Clerk Winters and entered on the record April 25, 1963.

The record shows that the appeal began with an extension of time granted May 2, 1962, a second extension of time granted May 28, 1962. An Application for Leave to Appeal directed to the Michigan Supreme Court was filed with the Clerk of Genesee County Court on July 3, 1962 with nothing filed in the Michigan Supreme Court. On July 5th, two days after said filing, another 30-day time extension was procured in order to perfect the appeal. Another extension was procured on September 25, 1962 in order to perfect the appeal, with a Concise Statement of Facts signed by the trial judge on the said date, the Application was not filed until seven months later, when filed April 25, 1963 and was filed against the legitimate protest by the defendant who had exercised his right to fire his unethical lawyer because of his rotten ethics.

The Application for Leave to Appeal as filed in the State Supreme Court of Michigan was claimed to be a conformance copy signed by the lawyer himself as such, but found to be entirely out of context with the original filed with the Genesee County Clerk on July 3, 1962, in the important matters of dates of execution and text of the conflicting documents. No brief in support of his spurious presentation, no statute or precedents were offered by Attorney Winegarden. Yet the Supreme Court of Michigan purportedly considered the spurious document in the light of it being legal.

The defendant then began to procure such portions of the record as he was able to afford, and became aware of his lawyer's perfidy. On November 20, 1964, defendant filed a civil suit #4042 in the Circuit Court of Genesee County seeking recovery of the money paid his former lawyer, Jerome Winegarden. With the newly implemented Court of Appeals to be activated in Michigan on January 1, 1965, defendant applied to his former trial judge for legal aid in preparing a new appeal. This request was denied on December 3, 1964. Subsequent efforts made by defendant to hire his own legal counsel failed, some of the lawyers contacted were openly hostile because defendant had sued his former Court-appointed lawyer, and snidely stated that it might happen to them also.

Defendant in pro-se then filed his application to the Court of Appeals in September 1965, and the case was remanded to his trial Court on November 19, 1965 for the stated purpose of getting the defendant's version of his alleged voluntary confession, and making a separate record of same. On December 17, 1965, defendant appeared in a court in which the atmosphere reeked with hostility. He had been denied a lawyer on appeal by said Court; had appeared at the remand without a lawyer, and was not asked if he had one, or desired one to represent him.

Defendant's past experience in his court, and the absence of vital records on two previous appearances, had prompted defendant to engage a qualified Gregg Shorthand Secretary to take notes of the proceedings and stated to the judge that the miserable abuses previously perpetrated made it necessary to safeguard defendant's rights in the court. The hearing of course resulted in the judge upholding the former decision of the voluntariness of the confession, thereby giving the Court of Appeals the opportunity to uphold the decision of the lower-Court without consider-

ing the various factors of due process denials sufficient to negate any confession whether voluntary or not.

PREJUDICIAL ENMITY OF THE COURTS STILL EXISTS:

After pending for more than five years and booted around among five Circuit Judges, civil suit #4042 was finally brought to trial on May 6th, 7th and 8th, 1970. By a unanimous verdict, 12 citizens of Genesee County, Michigan, comprising the jury panel, found that defendant's former lawyer, Jerome Winegarden, had been negligent in representing his client's interests and that he should refund $937.80 of the money to his former client.

Attorney Winegarden, defendant in said suit, moved the Court for a directed verdict of no cause. His motion was denied, and in due time, defendant Winegarden moved for a new trial, with his motion also not granted. To date, eight months later, the Court has not entered judgment against Attorney Winegarden in keeping with the jury's verdict nor has the defendant in said cause, Attorney Jerome Winegarden, sought relief through the channel of appeal. The factors in said civil suit arose from the unethical representation by Lawyer Winegarden in the defendant-appellant's original trial for murder in March 1961, and his equally reprehensible conduct in a fraudulently conceived and illegally executed Application for Leave to Appeal in 1962 and 1963.

Defendant-appellant submits the above details of civil suit #4042 in support of his allegation of prejudicial enmity of the Courts of Michigan in depriving him of relief when abuses of his rights under both Common Law and Constitutional mandates are so palpably clear.

CONCLUSION

Defendant-appellant prays that the Court will grant a reversal and remand for a new trial.

Respectfully submitted,

WILLIAM STAFFORD, SR.,
#107485, Pro Per
4000 Cooper Street
Jackson, Michigan 49201

Dated: December 29, 1970

APPENDIX A

[fol. 1] JOURNAL OF THE CIRCUIT COURT
FOR THE COUNTY OF GENESEE

At a general Term of the Circuit Court for the County of Genesee, continued and held at the Court House, in the City of Flint, in said County, on Monday the 16th day of April, 1962.

Present: Hon. John W. Baker, Circuit Judge.

The Court was opened for business in due form .....

The People of the State of Michigan
vs. } #18407
William Stafford, Sr.,

William Stafford, Sr., the respondent in this cause, represented by Jerome Winegarden, having been by the verdict of the Jury convicted of the crime of Murder-1st degree, as appears by the record thereof, and having been by the Prosecuting Attorney brought to the bar of the Court for sentence and having there been asked by the Court if he had anything to say why judgment should not be pronounced against him, and having said what he had to say;

Therefore, it is Ordered and Adjudged by the Court now here that said respondent be confined in the Michigan Corrections Commission at the State Prison of Southern Michigan, at Jackson, Michigan under the provisions of the Michigan Code of Criminal procedure and the Michigan Penal Code for a period of the balance of his natural life in Solitary Confinement at hard labor, from and after this date.

APPENDIX B

[fol. 1] AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 3rd day of June in the year of our Lord one thousand nine hundred and sixty-three.

Present the Honorable

LELAND W. CARR,
Chief Justice,
JOHN R. DETHMERS,
HARRY F. KELLY,
EUGENE F. BLACK,
THOMAS M. KAVANAGH,
THEODORE SOURIS,
OTIS M. SMITH,
MICHAEL D. O'HARA,
Associate Justices.

The People of the State of Michigan,
Plaintiff,

vs. #18407

William Stafford,
Defendant.

In this cause an application is filed by defendant for leave to appeal from an order of the Genesee circuit court and an answer in opposition thereto having been filed by plaintiff and due consideration thereof having been had by the Court, It is ordered that the application be and the same is hereby DENIED.

STATE OF MICHIGAN—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 4th day of June in the year of our Lord one thousand nine hundred and sixty-three.

/s/ Donald F. Winters
Clerk.

APPENDIX C

[fol. 1] AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Lansing, on the 19th day of November in the year of our Lord one thousand nine hundred and sixty-five.

Present the Honorable
Thomas Giles Kavanagh
Presiding Judge
Hon. Louis D. McGregor
Hon. Timothy C. Quinn
Judges

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

vs.

WILLIAM A. STAFFORD,
Defendant-Appellant.

#1228

In this cause an application for delayed appeal is filed by defendant, and an answer in opposition thereto having

been filed and due consideration thereof having been had by the Court;

IT IS ORDERED that the cause be and the same is REMANDED to the circuit court of Genesee County to assume jurisdiction and to make a determination upon a separate record of the voluntariness of the defendant's confession. At this hearing, after due notice to the prosecuting attorney, the defendant may take the stand and testify for the limited purpose of making of record of his version of the facts and circumstances under which the confession was obtained. By doing so, the defendant does not waive his right to decline to take the stand on trial in chief, if retrial is ordered, nor does he waive any of the other rights stemming from his choice not to testify.

If the trial judge, on the basis of the hearing and record made before him, determines the confession was involuntarily made, he shall enter an order granting a new trial and the defendant shall be rearraigned and required to plead anew to the information. The said order shall constitute a final judgment for purposes of review.

STATE OF MICHIGAN—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 19th day of November in the year of our Lord one thousand nine hundred and sixty-five.

/s/ Ronald L. Dzierbicki
Clerk

APPENDIX D

[fol. 1] AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Lansing, on the 14th day of July in the year of our Lord one thousand nine hundred and sixty-six.

Present the Honorable

Thomas Giles Kavanagh
Presiding Judge
Louis D. McGregor
Timothy C. Quinn
Judges

People of the State of Michigan,
Plaintiff-Appellee

vs

William Stafford,
Defendant-Appellant

NO. 1800

In this cause a motion to affirm the judgment of the trial court and deny the appeal heretofore filed herein, having been filed, and it appearing to the Court from an examination of the record that the trial court found after a proper evidentiary hearing that the confession of the defendant which was admitted in evidence at the trial was voluntarily made,

IT IS ORDERED that the appeal be and the same is hereby DISMISSED and the judgment of the trial court is affirmed.

Appendix D

STATE OF MICHIGAN—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby ce: ify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 18th day of July in the year of our Lord one thousand nine hundred and sixty-six.

/s/ Ronald L. Dzierbicki
Clerk

APPENDIX E

[fol. 1]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM A. STAFFORD,
Petitioner,

vs.

GEORGE A. KROPP, WARDEN,
Respondent.

DOCKET NO. 29442

HABEAS CORPUS
PROCEEDINGS

ORDER DISMISSING HABEAS CORPUS PROCEEDINGS

At a session of said Court, held in the U.S. District Court, at Detroit, Michigan on Dec. 1, 1967.

PRESENT: HON. Fred W. Kaess
District Judge

In accordance with a Stipulation to that effect, and the Court being fully advised in the premises,

ON MOTION OF LARRY MIDDLETON,
Attorney for the Petitioner,

IT IS ORDERED, that the above entitled Habeas Corpus Proceedings be, and the same hereby are, dismissed, without prejudice.

/s/ Fred W. Kaess
DISTRICT JUDGE

APPENDIX F

[fol. 1]

PEOPLE OF THE STATE OF MICHIGAN,

VS.

WILLIAM STAFFORD, SR.,
Defendant

CASE NO. 18407
JUDGE JOHN W. BAKER

ORDER FOR DISMISSAL

At a session of said Court, held at the Court House, in the city of Flint, on this 30 day of April, A.D., 1968.

PRESENT: HONORABLE JOHN W. BAKER, CIRCUIT JUDGE

The above entitled Motion having come on for hearing,

IT IS ORDERED that said Motion be and hereby is dismissed.

JOHN W. BAKER
JOHN W. BAKER
CIRCUIT JUDGE

4-30-68

ROBERT F. LEONARD
PROSECUTING ATTORNEY
GENESEE COUNTY
FLINT, MICHIGAN
105 COURT HOUSE
BY: Earl S. Clark
/s/ Ellis S. Walters
Assistant Prosecuting Attorney

APPENDIX G

[fol. 1]

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff and Appellee, vs. WILLIAM STAFFORD, SR., Defendant and Appellant,	Court of Appeals No. ..... Lower Court No. 18407

CLAIM OF APPEAL

WILLIAM STAFFORD, SR., Defendant, claims an appeal from the Order, entered April 30, 1968, in the Circuit Court for the County of Genesee, by the Hon. John W. Baker, Circuit Judge.

/s/ William Stafford, Sr.
WILLIAM STAFFORD, SR., Defendant (107485)
In Proper Person
4000 Cooper Street
Jackson, Michigan - 49201

Copies to;-

DATED: MAY 22, 1968.

Enclosure: Check $25.00 Filing fee.

APPENDIX H

[fol. 1]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM STAFFORD, SR.,
Petitioner,

vs.

GEORGE A. KROPP, Warden, et al,
Respondents.

Civil No. 32264

OPINION AND ORDER DENYING PETITIONER'S APPLICATION FOR WRIT OF HABEAS CORPUS

At a session of said court, held in the Federal Building in the City of Detroit, *Michigan, on May 1, 1969.*

Present: The Honorable FRED W. KAESS,
United States District Judge.

Petitioner, William Stafford, Sr., is presently incarcerated in the State Prison of Southern Michigan, at Jackson, and has filed a petition for a writ of habeas corpus. Petitioner's detention is by virtue of an April 16, 1962 Genesee County Circuit Court conviction—sentence of life for the crime of first-degree murder.

Petitioner's request for relief is based upon alleged violations of his constitutional rights: (A) denial of his right against self-incrimination; (B) denial of due proc-

ess at his arraignment before the municipal judge; (C) denial of due process as a result of lack of counsel at preliminary hearing; (D) duress employed by trial court in compelling petitioner to accept court-appointed counsel; (E) deprived of witnesses in violation of rights of petitioner, as well as being placed in jeopardy by inept attor-
[fol. 2] ney; (F) denial of due process in appeal procedure by unethical attorney with sanction by the court; and (G) prejudicial enmity depriving petitioner of his right to a fair hearing of grievance.

This court, having given consideration to the pleadings, records, and files regarding this matter, finds that petitioner has never presented questions B, C, and D to the Michigan Court of Appeals, and was denied leave to appeal to the Michigan Supreme Court per order of November 1, 1968, for failure to so present those issues. In the same order petitioner was denied leave to appeal to the Michigan Supreme Court as to questions A, E, F, and G because those questions were being appealed in an untimely fashion from decisions of the Michigan Court of Appeals in 1965 and 1966.

Question A, right against self-incrimination and voluntariness of confession, was entertained by the Court of Appeals and remanded to the trial court for a determination as to the voluntariness of petitioner's confession. In January of 1966 the trial court determined the confession to have been voluntary and the Court of Appeals affirmed its decision in July of that year. As to questions E and F, going to the competency of his attorney, petitioner has failed to exhaust his remedies in Michigan's Ap-
[fol. 3] pellate Courts. Question G, prejudicial enmity of the trial judge, is without merit and based upon unsupported conclusions.

Appendix H

Title 28, U.S.C., § 2254, provides that no petition for habeas corpus may be granted by a Federal Court unless it appears that the petitioner has exhausted the remedies available to him in the state courts, or the available state remedies are not effective to protect his rights. *Fay v. Noia*, 372 U.S. 391 (1963); *Curtis v. Buchkoe*, 336 F.2d 32 (1964); *Russell v. Maxwell*, 348 F.2d 908 (1965). There appears to be no reason why this court should assume that the corrective process available to petitioner in Michigan would not be effective to protect his rights. *Whalen v. Frisbie*, 185 F.2d 607 (1950).

In order for this court to entertain petitioner's application for writ of habeas corpus he must, first, exhaust his available state remedies. He has failed to do this.

Therefore, IT IS ORDERED that petitioner's application for writ of habeas corpus is denied.

FRED W. KAESS
United States District Judge

APPENDIX I

[fol. 1]

No. 19,736

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIAM STAFFORD, SR.,
Petitioner-Appellant,

vs.

GEORGE A. KROPP, Warden
State Prison of Southern Michigan,
Respondent-Appellee.

PER CURIAM ORDER

(Filed March 3, 1970)

Before: PHILLIPS, McCREE and BROOKS

Petitioner appeals from the denial of his Petition for a Writ of Habeas Corpus. The District Judge dismissed petitioner's application because he found that petitioner had failed to exhaust the remedies available to him in the state courts. 28 U.S.C., Section 2254(b).

Whether available state remedies have been exhausted is a "question of fact to be determined by the trial court . . . ." *Barber vs. Page*, 355 F.2d 171, 172 (10th Cir. 1966). A review of the briefs and the record on appeal does not demonstrate that the District Judge's determination that petitioner has not exhausted available state remedies is clearly erroneous.

[fol. 2] Accordingly, the judgment of the District Court will be and it hereby is affirmed. This

determination is not a decision on the merits of petitioner's allegations and it is without prejudice to a subsequent filing of another petition upon a proper showing of the exhaustion of available state remedies. *U.S. ex rel McBride vs. Fay*, 370 F.2d 547, 549 (2d Cir. 1966).

Entered by order of the Court

/s/ Carl W. Reuss
Clerk

APPENDIX J

[fol. 1] AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Lansing, on the 20th day of July in the year of our Lord one thousand nine hundred and seventy.

Present the Honorable

Donald E. Holbrook
Presiding Judge
John W. Fitzgerald
Thomas M. Burns
Judges

Appendix J

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

vs.

WILLIAM STAFFORD,
Defendant-Appellant.

No. 9401

L.C. #18407

In this cause an application for delayed appeal is filed by defendant-appellant, and an answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the application for delayed appeal be, and the same is hereby DENIED, for lack of merit in the grounds presented.

STATE OF MICHIGAN—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 21st day of July in the year of our Lord one thousand nine hundred and seventy.

/s/ Ronald L. Dzierbicki
Clerk

APPENDIX K

[fol. 1] AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 27th day of October in the year of our Lord one thousand nine hundred and seventy.

WM 7-90

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v.

WILLIAM STAFFORD,
Defendant-Appellant.

Present the Honorable
THOMAS E. BRENNAN,
Chief Justice
JOHN R. DETHMERS,
HARRY F. KELLY,
EUGENE F. BLACK,
THOMAS M. KAVANAGH,
PAUL L. ADAMS,
THOMAS G. KAVANAGH,
Associate Justices

On order of the Court, the delayed application in pro per for leave to appeal is considered, and the same is hereby DENIED, for the reasons that defendant and appellant has failed to persuade the Court that he has a meritorious basis for appeal or that the determination of the Court of Appeals was clearly erroneous.

STATE OF MICHIGAN—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 27th day of October in the year of our Lord one thousand nine hundred and seventy.

/s/ Donald F. Winters
Clerk.

Supreme Court, U.S.
FILED
APR 22 1971
E. ROBERT SEAVER, CLERK

In The

SUPREME COURT OF THE UNITED STATES

No. 1273

October Term, 1970

WILLIAM STAFFORD, SR.,

Petitioner,

-vs-

THE STATE OF MICHIGAN,

Respondent.

Appeal From the Supreme Court of the State of Michigan

MOTION TO DISMISS OR AFFIRM AND BRIEF AND APPENDIX IN SUPPORT THEREOF

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

Stewart H. Freeman,
Assistant Solicitor General

The Seven Story Office Building
525 West Ottawa Street
Lansing, Michigan 48913

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MOTION TO DISMISS OR AFFIRM

NOW comes Frank J. Kelley, as Attorney General of the State of Michigan, by Robert A. Derengoski, Solicitor General, and Stewart H. Freeman, Assistant Solicitor General, to respectfully move that this Honorable Court dismiss this appeal or alternatively that the decision below be affirmed.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

Stewart H. Freeman,
Assistant Solicitor General

In The

SUPREME COURT OF THE UNITED STATES

No. 1273

October Term, 1970

WILLIAM STAFFORD, SR.,

Petitioner,

-vs-

THE STATE OF MICHIGAN,

Respondent.

Appeal From the Supreme Court of the

State of Michigan

BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM

COUNTERSTATEMENT OF QUESTION PRESENTED

The State will attempt to answer the issues raised by Petitioner.

COUNTERSTATEMENT OF THE CASE

Appellant was tried and convicted by a jury of murder in the first degree in the Genesee County Circuit Court

on March 21, 1962. On April 16, 1962, Defendant was sentenced to life in prison.

On November 18, 1965 the Michigan Court of Appeals remanded the Cause to the Genesee County Circuit Court for the limited purpose of having a hearing to determine the voluntariness of Appellant's confession used at trial. The trial court ruled that Appellant's confession was voluntarily given. The trial court's order was appealed to the Michigan Court of Appeals. The Court of Appeals affirmed the ruling of the trial court by its order entered July 18, 1966. (Court of Appeals No. 1800). Copies of the transcript of the evidentiary hearing and of the decision of the trial judge are contained in the appendix to this brief.

Appellant, represented by attorney Larry Middleton, filed a delayed motion for a new trial in the Genesee County Circuit Court, the Honorable John W. Baker on March 25, 1968. In that motion post-conviction counsel raised the following pre-trial errors in an effort to gain reversal of Appellant's conviction:

a) That Appellant ". . . was held incommunicado and denied advice of counsel for a protracted period of time and was denied counsel at the time of his arraignments in the Municipal Court for the City of Flint (November 6, 1961 and November 13, 1961) although he requested an opportunity to retain counsel. . . ."

b) That ". . . defendant was denied representation and advice of counsel at the time of the examination held in the Municipal Court, on November 15, 1961. . . ."

c) That ". . . defendant was denied a fair opportunity and reasonable time in which to retain counsel and was obliged to pay *in full* for an attorney arbi-

trarily appointed by the Court on the basis that defendant was indigent and unable to obtain counsel."

The trial court by written opinion dated April 19, 1968 denied Appellant's delayed motion for a new trial. (A copy of the opinion is in the appendix.)

On this appeal it appears that Appellant is essentially raising the same questions as were presented to the trial court in Appellant's delayed motion for a new trial and in addition thereto attacks the competency of his trial and subsequent appellate counsel.

ARGUMENT

I.

THE TRIAL COURT DETERMINED AFTER A FULL HEARING THAT THE CONFESSION WAS VOLUNTARY. THIS FINDING OF FACT IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

Appellant maintains that his first degree murder conviction should be set aside because he was " * * * held incommunicado from family and legal counsel * * *." In support of this contention Appellant's affidavit states only that members of his family were denied an opportunity to communicate with him. Other affidavits offered by Appellant indicate that Appellant's estranged wife and a first cousin were the persons excluded. Nowhere other than Appellant's belated appeal does he state that he either requested or attempted to communicate with a lawyer. It should be pointed out however that the affidavit of Appellant's estranged wife indicates that attorney Robert Grimes had contacted Appellant while Appellant was in jail. Appellant's

own statements at the preliminary examination on November 15, 1961 at pages 4, 45, and 46 indicate that Appellant had received legal advice from someone, and there is no statement that Appellant had not consulted at some point with an attorney. The Affidavits offered by Appellant only appear to go to the denial of visitation rights to the estranged wife and first cousin of Appellant. Appellant fails to cite an authority in support of his argument that calls for a reversal of a conviction on the grounds that he now asserts.

When this question was presented to the trial court in his delayed motion for a new trial the Honorable John W. Baker made the following ruling:

> "Defendant claims to have been held incommunicado and denied advice of counsel for a protracted period of time and was denied counsel at the time of his arraignments in the municipal court for the City of Flint, November 6, 1961 and November 13, 1961, although he requested an opportunity to retain counsel.
>
> "It is apparent from the affidavits on file that the only persons who sought to visit with defendant and were denied such visitation were his estranged wife, Cornelia Stafford, and his first cousin, Elzie Sullivan. The affidavit states that Robert Grimes and an attorney, went to the jail and demanded and got visiting privileges for her. Defendant in his affidavit indicates that when he appeared in Court on November 15, 1961, although he was then without counsel, he had been advised to either be represented by counsel at this hearing or waive examination."

For the reasons stated by the trial judge (113b-114b), the State contends that the confession was voluntary. Appellant

argues that he was denied a witness at trial because a certain psychiatrist was not permitted to visit with him in the county jail. Appellant fails to show, however, what function this witness at trial could have served. It would be fair to assume that the purpose of a psychiatrist's testimony might involve the defense of insanity. However, the docket entries in this cause, Genesee County Circuit Court No. 18407, do not show that the defense of insanity was ever asserted, that is, the docket entries do not reflect that defense counsel ever served notice on the prosecutor that defendant was going to assert the defense of insanity.

The People submit that the first ground upon which Appellant seeks reversal of his conviction is so unsubstantial as to lack merit in the grounds presented.

II.

APPELLANT WAS IN NO WAY PREJUDICED BY THE ABSENCE OF COUNSEL AT HIS PRELIMINARY EXAMINATION.

Appellant's second pre-trial assertion of error is that he was denied the right to counsel at his preliminary examination. The record of that proceeding does not reflect that Appellant indicated a desire at the time to be represented by counsel, nor does it reflect that he was denied counsel. It appears, however, that Appellant had been advised by someone to have counsel to assist him at the preliminary examination or to waive examination and then procure counsel. The record fails to show that Appellant in fact demanded that an attorney be present, nor is there any showing that Appellant requested that the preliminary hearing magistrate grant a continuance to allow him time

to procure an attorney. The People concede that Appellant was without the assistance of counsel at his preliminary examination, but this surely does not imply that he was denied the assistance of counsel as Appellant here argues.

The State-Court decisions here assailed all ante-dated this Court's decision in *Coleman* v. *Alabama* US 26 L ed 2d 387 (1970), and the State-courts consequently were without the benefit of this Court's opinion in deciding this matter.

It is clear, however, that the Michigan trial court applied the correct test. In *Coleman* (26 L ed 2d at 397-398) this Court stated the test to be whether the denial of counsel was harmless error or prejudicial error.

In the matter at bar, in denying the motion for new trial, the trial judge stated:

> "The court finds no prejudice to Defendant as a result of the proceedings in Municipal Court." (116b).

In this Court, the petitioner fails to allege any facts which would tend to show error in the State-court finding of no prejudice.

Accordingly, the State contends that there is no substance to this alleged issue.

III.

PETITIONER WAS NOT DENIED THE EFFECTIVE REPRESENTATION OF COUNSEL.

Appellant's third ground for reversal is a contention that he was denied a fair opportunity and reasonable time within which to retain counsel and that he was compelled to pay in full for an attorney arbitrarily appointed by the trial court at his arraignment on the information. In support of this contention Appellant relies on *United States v. Balk*, 318 F 2d 288. In *Balk* defense attorneys were substituted four days prior to defendant's trial, and over objection and express dissatisfaction of defendant with his new lawyer he was compelled to stand trial. That case is surely distinguishable from the case at bench. In the instant case the records and files are devoid of any showing that Appellant evidenced a desire to hire his own attorney. Further, there is no showing that he requested any judge for time within which to procure his own counsel. The records indicate that Appellant appeared before the Honorable Donn D. Parker on November 20, 1961 for the purpose of arraignment on the information. At that time Appellant claimed to be indigent and requested that the Court appoint counsel to represent him at trial. (transcript of proceeding November 20, 1961) Appellant's arraignment was adjourned to November 27, 1961 at which time Appellant took the stand for the purpose of making a showing of indigency. The trial court then appointed attorney Jerome Winegarden to represent Appellant at trial. When this question was presented to the trial court in Appellant's delayed motion for a new trial, the trial judge held:

> "• • • The case of *United States v. Balk*, 318 F 2d 288 does not apply here. In that case, the defendant expressed dissatisfaction with counsel before trial and

his request for delay to obtain other counsel was denied."

In the *Balk* case, *supra*, at p. 291, is the following:

"Therefore, the question boils down to whether appellant Balk had a fair opportunity and reasonable time to select other counsel of his own choice. While the history of the case heretofore set out indicates that appellant Balk waivered to some extent as to whether he might go forward with Mr. Barris or accept Mr. Walker, we believe that the record fairly reveals that the definite position of Mr. Balk was that he desired Mr. Louisell to try his case and if not, that he should have more time to select a lawyer that he had confidence in."

Judge Baker went on to say:

"Defendant Stafford was before Judge Parker on November 20, 1961. He stated that he was indigent and desired an attorney appointed. The arraignment was adjourned to November 27, 1961 and defendant took the stand and testified as to his need for appointed counsel for him. Apparently Defendant was later able, financially, to pay for his attorney and did so.

The Court does not find any breach of discretion or prejudice to the Defendant arising from the procedure followed concerning the appointment of counsel." (117b-118b).

The People submit that the trial court's ruling as to Appellant's third ground for reversal is the correct and proper holding.

In a case where an accused has some income, but is unable to collect sufficient funds for an attorney retainer fee there is no reason why he should not be considered indigent by the court to which he applies for indigent counsel. That an accused might attempt to defray or reduce the public cost for the procurement of an attorney is not unreasonable. When this was suggested to Appellant by Judge Parker Appellant agreed that this was the "fair" thing to do. (transcript of November 27, 1961 proceeding). The People submit that the fact that Appellant may have paid for the entire cost of his defense is irrelevant.

The records in this cause fail to reflect that Appellant was dissatisfied with his attorney Jerome Winegarden. Appellant's agreement as far as financing his defense was exactly what he agreed to and he should not be heard to complain. Appellant was in a better position than anyone to determine his financial condition at this time, and not Judge Parker. If Appellant did in fact have sufficient funds with which to procure counsel as he claims in this appeal, then Appellant should not now be permitted to claim that due to his own fraudulent representation to the Court that he was indigent, that the trial court should not have appointed an attorney for him.

The standard by which the adequacy of representation is to be determined is implicit and explicit in numerous cases throughout the country where the courts have considered claims of denial of an effective representation in varying factual situations. A question of this character is largely factual; the standard to be applied is succinctly stated in *Jones v. Cunningham*, 313 F 2d 347 (4 Cir. 1963) at page 353:

> "Of course, it is not for a lawyer to fabricate defenses, but he does have an affirmative duty to make suitable

> inquiry to determine whether a valid one exists. Such a duty is imposed for the salutory reason that '(p)rior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved and then to offer his informed opinion as to what plea should be entered."

The People submit that while a lack of effective representation, *if proved*, is sufficient to invalidate a conviction, the subsequent conviction is valid if there is clear proof that no prejudice resulted. See *Turner* v. *State of Maryland*, 318 F. 2d (4 Cir. 1963).

In the case at bench although Appellant has many complaints regarding his attorney he fails to show that he did not in fact receive adequate representation.

Although it appears that there was some delay in filing an appeal to the Michigan Supreme Court, Appellant fails to show that this delay, for what ever reason, should be grounds for reversal of his conviction. Further, Appellant vigorously complains that the Court of Appeals did not answer certain issues that were raised, but merely limited the appeal to the question of the voluntariness of a purported confession that was used against him at trial. It is the position of the People that this argument too fails to state valid grounds relief.

The People conclude that Appellant's third complaint fails to state a substantial ground for reversal of his conviction.

Conclusion and Prayer

For the aforegoing reasons, the State contends that no issue of substance is here presented and that the appeal should be dismissed, or alternatively, that the decision of the Michigan courts should be affirmed.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

Stewart H. Freeman
Assistant Solicitor General

The Seven Story Office Building
525 West Ottawa Street
Lansing, Michigan 48913

Dated: April 20, 1971

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DOCKET ENTRIES

NO. 18407

PROCEEDINGS

1961

Nov.	16	M. C. Returns Filed.
Nov.	20	Information Filed.
Nov.	20	Arraignment deferred for one week.
Nov.	27	Jerome Winegarden appointed attorney by Court. Arraignment deferred for one week.
Nov.	28	Appearance Filed.
Nov.	29	Petition Filed.
Nov.	29	Order Filed.
Dec.	4	Waived reading, Stood Mute. Plea of Not Guilty entered. Remanded to custody of Sheriff without Bond.
Dec.	5	Testimony Filed.
Dec.	5	Judge's Remarks Filed.
Dec.	8	Judge's Remarks Filed.
Dec.	13	Judge's Remarks Filed.

1962

Mar.	12	Notice of Witness Filed.
Mar.	13	Jury of 14 drawn and sworn, heard opening statement of counsel, proofs and allegations heard in part. Thomas Woods # 5 Juror excused from further consideration of the Case. Further proofs and allegations heard in part.

Case adjourned to tomorrow morning at nine o'clock.

Mar. 14 Jury as drawn, returned and heard further proofs and allegations in part. Case adjourned to tomorrow morning at nine o'clock.

Mar. 15 Jury returned and heard further proofs and allegations in part. Motion by attorney Winegarden to reduce charge to Manslaughter. Denied by Court. Jury heard further proofs and allegations in part. Case adjourned until tomorrow morning at nine o'clock.

Mar. 16 Jury as drawn, returned and heard further proofs and allegations. Case adjourned to Tuesday morning at nine o'clock.

Mar. 20 Jury returned and heard balance of proofs and allegations, Motion by Jerome Winegarden to reduce charge to "Manslaughter"—*DENIED.* Jury returned and heard arguments of Counsel in part. Case adjourned to tomorrow morning at nine o'clock.

Mar. 21 Jury as drawn, returned and heard arguments of Counsel in full, Charge of Court and excused Juror: Paul Hyatt, from further consideration, Verdict of Jury: Guilty of Murder in First Degree. Sentence deferred to Apr. 16, 1962. Remanded to custody of Sheriff.

Mar. 21 Respondent's request to charge Filed.

Apr. 4 Notice of Motion and Motion for New Trial Filed.

Apr. 4 Affidavit in support of Motion for New Trial filed.

Apr. 4 Judge's Remarks Filed.

Apr.	6	Answer to Motion for New Trial Filed.
Apr.	9	Motion made by Jerome Winegarden for New Trial—DENIED BY COURT.
Apr.	16	Sentence: Balance of Natural Life in Solitary Confinement at Hard Labor.
Apr.	16	Commitment Made.
Apr.	16	Judge's Remarks Filed.
Apr.	16	Record of Sentence mailed "Governor".
Apr.	17	Warden's Receipt Filed.
May	2	Stipulation and Order for Extension of Time for *Appeal Filed.*
May	28	*Order Granting Extension of Time for Appeal Filed.*
July	3	Notice of Motion and application for Leave to Appeal Filed.
July	3	Concise Statement of Proceedings and Facts Filed.
July	5	Stipulation and Order for Extension of Time for Appeal Filed.

1963

June	7	Remittitur Denying Application for Leave to Appeal Filed.

1964

Aug.	20	Petition Filed.
Dec.	4	People's Answer to Defendant's request for Court appointed Counsel Filed.
Dec.	4	Order Denying request for Counsel Filed.

1965

Sept. 27 Proof of Service Filed. *Brief in Opposition to* Application for Delayed Appeal Filed.

Nov. 22 Remittitur from Court of Appeals to Remand to Circuit Court *to Assume Jurisdiction Filed.*

Dec. 22 Petition and Order for Writ of Habeas Corpus Filed. *Writ of Habeas Corpus Issued.*

1966

Jan. 4 Motion and Notice of Hearing Filed.

Jan. 10 Motion by the Prosecuting Attorney to adjourn One Week. Granted. Remanded.

Jan. 17 Motion by the Prosecuting Attorney for Hearing to Determine the Voluntariness of the Defendant's Confession, Hearing Held, Court *Reserved Decision on the Hearing.*

Jan. 18 Decision on Motion Filed.
The Court Denied the Motion to Set Aside the Conviction.

Jan. 21 Judge's Remarks Filed. (3)

Jan. 25 Judge's Remarks Filed.

Mar. 3 Claim of Appeal Filed.

May 5 Court Proceedings Filed. (1 Book).

June 9 Motion to Affirm—Notice of Hearing—Brief in Support Filed.

July 20 Remittitur from Court of Appeals, *DISMISSING APPEAL AND JUDGMENT OF TRIAL COURT AFFIRMED FILED.*

1968

Feb. 7 Motion and Notice of Hearing and Proof of Service Filed.

Feb. 7 Notice of Hearing, Application for Leave to File a Motion for a New Trial and Affidavits in Support thereof Filed.

Feb. 19 Motion Made by Larry Middleton for Leave File a Delayed Motion for New Trial. *Motion Granted.*

Feb. 29 Order Granting Application for Leave to File a Delayed Motion for a New Trial Filed.

Mar. 18 Motion and Notice of Hearing, Proof of Service, Delayed Motion for a New Trial, Affidavit in Support of Delayed Motion for a New Trial, and Affidavit Filed.

Mar. 22 Answer to Delayed Motion for a New Trial Filed.

Mar. 25 Motion made by Larry Middleton to Grant a Delayed Motion for a New Trial.
TAKEN UNDER ADVISEMENT BY THE COURT.

Apr. 22 Opinion on Motion for New Trial, *Denied by Court* and Prosecutor may submit an *Order of Denial Filed.*

Apr. 30 Order for Dismissal Filed.
(Motion be and hereby is Dismissed as to a New Trial).

May 27 Claim of Appeal Filed.

June 19 Request for Stenographer's Transcript of Proceedings Filed.

STATE OF MICHIGAN }
County of Genesee } ss.

I, GEORGE G. DUNN, Clerk of said County of Genesee and Clerk of the Circuit Court for said County, do hereby certify that I have compared the foregoing photographic copy of Case No. 18407. The People -vs- William Stafford, Sr. with the original record now remaining in my office and it is a true and exact photographic reproduction and the whole of such original record.

In Testimony Whereof, I have hereunto set my hand, and affixed the seal of said Court and County, this 11th day of September A.D. 1968.

GEORGE G. DUNN /s/
Clerk

By Marie Hefner /s/
Deputy County Clerk

DOCKET ENTRIES

CASE #18408

PROCEEDINGS

1961	
Nov. 16	M. C. Returns Filed.
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Nov. 27	Jerome Winegarden appointed attorney by Court. Arraignment deferred for one week.
Nov. 28	Appearance Filed.
Nov. 29	Petition Filed.
Nov. 29	Order Filed.
Dec. 4	Waived reading, Stood Mute. Plea of Not Guilty entered. Remanded to custody of Sheriff without Bond.
Dec. 5	Testimony Filed.
Dec. 5	Judge's Remarks Filed.
Dec. 8	Judge's Remarks Filed.
Dec. 13	Judge's Remarks Filed.
1962	
Feb. 27	Notice of Defense of Insanity Filed.
1963	
1967	
Nov. 2	Order refunding money to William Stafford for a duplicate copy of Transcript Filed.

Nov. 2 $52.00 refund made and mailed to William Stafford at Jackson Prison. (A Duplication of copy of Transcript requested.)

Dec. 15 Order for Nolle Prosequi Filed.

Dec. 15 Petition for an Order of Nolle Prosequi Filed.

STATE OF MICHIGAN }
County of Genesee } ss.

I, GEORGE G. DUNN, Clerk of said County of Genesee and Clerk of the Circuit Court for said County, do hereby certify that I have compared the foregoing copy of Docket Entries—Case #18408 The People -vs- William Stafford, Sr., with the original record thereof, now remaining in my office, and that it is a true and correct transcript therefrom, and of the whole of such original record.

In Testimony Whereof, I have hereunto set my hand, and affixed the seal of said Court and County, this 11th day of September A.D. 1968.

GEORGE G. DUNN /s/
Clerk

By Marie Hefner /s/
Deputy County Clerk

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF GENESEE

THE PEOPLE OF THE STATE OF MICHIGAN vs. WILLIAM STAFFORD, SR., Defendant.	No. 18408

Proceedings had in the above titled cause before DONN D. PARKER, Circuit Judge, Genesee County Courthouse, Flint, Michigan, on Nov. 20, 1961.

APPEARANCES:

WALTER P. KUTA
Prosecuting Attorney

TRANSCRIPT: B PAGE: 8

Flint, Michigan
Monday, November 20, 1961

\- - -

MR. KUTA: William Stafford.
(The respondent came forward.)
(The Court addressed the respondent as follows:)

BY THE COURT:

Q Your name is William Stafford?

A Yes, sir.

Q How old are you?

A I'm 67½.

Q Do you have an attorney?

A I do not.

Q Do you want an opportunity to consult with an attorney?

A Yes, I do.

Q Have you made any effort to secure one?

A Yes. Owing to my financial condition I can't get the money together. I'm on retirement pension and I have an estranged wife to support, and that leaves me destitute. And I hoped to employe the services of Bob Grimes to defend me, but not going to raise the money to pay him, so, I ask the Court to furnish me with—

Q Didn't I have the separate maintenance suit between you and your wife last summer? Didn't I—

A You did.

Q You had some separate money. Anything else, out of that?

A Well, I got some of that. And there was some debts. Those funds were tied by, by my wife, in the bank, and I

was living at home and I had to maintain the home and utility bills, and that was all expensive, and also I had to suffer the loss of some money. I lost some money out of my billfold—and I never did know who took that, or under what circumstances. And later on, the empty billfold was returned to my house.

Q It seems to me at that time there was something about a settlement. Didn't you have a claim against somebody for an injury that you recovered some money from?

A Yes.

Q How much did you get?

A I haven't gotten anything. I don't even know if I will get anything. I had Miss Elsa Papp working on the case and the last news that I had from her, she said we would have to enter suit, and I haven't heard anything more about it. I don't know whether she has filed suit or not, but there certainly been nothing done towards settlement as far as I know.

Q How much income do you have from your—

A $214 a month.

Q What's that, Social Security and retirement?

A Yes, sir, Social Security, and I also have a Veteran's check that was awarded me under the new law that went into effect on July, '60, I believe; I was allowed $75 a month from that on the strength of having the wife to support, and with a total income of less than $2,000 a year I was entitled to that $75; and then a Chevrolet pension of $39.46 which, after deduction of Blue Cross covering the wife and I, I was receiving $20.02 a month from the Chevrolet, net.

Q Was this $214 a total of all of these?

A That's the way I have it figured, $119, $75, and $20.02.

Q Well, you be seated here and I'll have you up later.

THE COURT: Would you go down to the Clerk's Office and find the Stafford separate maintenance file. I heard it some time in the summer, William Stafford.

- - -

MR. KUTA: Your Honor, the only matters left are on the arraignments of Mr. William Stafford on the two charges of murder.

THE COURT: All right. Come back here, Mr. Stafford, step right around here.

(Respondent Stafford returned to the bench.)

Q (By the Court, continuing): Your income is $214 a month, is that right?

A Yes, sir.

Q And you still own a half interest in lot 9, block A, and lot 11, block A, except the south 30 feet in Genesee County Agricultural Society Addition; that's your home, isn't it?

A No, that's my wife's home. I understand that I turned that property over to her in the settlement.

Q Well, I signed a decree that said you both owned it.

A Well, there is an addition to that that perhaps the Court don't know. I signed a quit claim in her favor.

Q When did you do that?

A Oh, that was the day before we had the settlement.

Q Any mortgage on that house?

A No, sir, it's free and clear.

Q Well, on the 10th of October of this year I entered a decree that you each owned half of it and she had the right to live in it.

A Well, I signed a quit claim in her favor. She had it, and I can make her produce it in court. So, I own nothing except an old banged up car; I couldn't get $100 for it if it were put on the market.

Q Is she still claiming you as a veteran's exemption on the taxes out there?

A Yes, sir.

Q And you want the tax payers to hire a lawyer for you, too, is that right?

A Well, I don't have the funds to hire one myself.

Q How much was this house worth that you gave away?

A I think for tax purposes it was appraised for $5,000, that was for actual taxation, I believe it was $2,500, I believe that was what it was evaluated for tax purposes.

Q What could you sell it for?

A I don't know what I could sell it for, I'm not acquainted with the real estate market, I wouldn't know. But for tax purposes it's assessed for $2,500.

Q Have you still got the Chevrolet?

A Yes, it's still—

Q That's paid for, isn't it?

A Yes, it's paid for; everything that I have is paid for. I was 15 years paying for the house. I just got it paid for last spring.

What happened to the $1,600 you and your wife split just a month ago?

Well, actually it was $734—or, 64 ($764) to my half, and as I said, there was $400 of that money that I lost, I lost the billfold or had it taken from me, and with $400 of that money in there. And I didn't know at the time, I thought maybe I had stuck the billfold down in some part of the house—I'm kind of forgetful at times, especially when I am drinking and I would move things and put them in a place where I wouldn't remember—and for about a week I kept looking around and hoping to find it. And one day I found the billfold, somebody put it in the mailbox, well, out in the front room, and all the money and stuff was gone, and driver's license was stuck in there, and also all the money was gone. And at the time I was drinking there and I drank up what was left for me and I also bought groceries and I also was involved in a traffic accident and I paid about $120 in fines.

Q Well, you don't exactly qualify as an indigent, under

public counsel, and we will do a little more checking on these assets; you had assets, at least 30 days ago.

A Well, to be truthful, your Honor, I don't have a thing.

Q Well, you have over $200 a month.

A Well, $65 of that goes to my wife under the Court decree.

Q Well, I want to check into this deed. I think you own half of that house.

A Well, I would be happy to find that I do, sir.

THE COURT: Well, you be seated.

I hereby certify that the above is a true and correct transcript of the testimony and proceedings in the above entitled cause and the whole thereof on the above date.

Walter E. Gane /s/
WALTER E. GANE,
Court Reporter

I hereby certify that the above is a true record of the proceedings had in the above cause.

Donn D. Parker /s/
DONN D. PARKER,
Circuit Court Judge

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF GENESEE

THE PEOPLE OF THE STATE OF MICHIGAN vs. WILLIAM STAFFORD, SR. Defendant	No. 18407

Proceedings had in the above titled cause before DONN D. PARKER, Circuit Judge, Genesee County Courthouse, Flint, Michigan, on Monday, November 27, 1961.

APPEARANCES:

WALTER KUTA
Prosecuting Attorney

Transcript: C PAGES: 16

Flint, Michigan
Monday, November 27, 1961

\- - -

MR. KUTA: The only one left now is this William Stafford, the murder case.

THE COURT: All right. Mr. Stafford, will you step forward please.

(The respondent came forward and was addressed by the Court as follows):

BY THE COURT:

Q Mr. Stafford, last week you asked that counsel be appointed for you at public expense and at that time the Court asked you about certain assets you have as shown by a recent file and about your income.

A Yes, under the circumstances I think the arrangements are just about complete for me to get my own attorney and I have a counsel with him today and I feel quite sure it can be arranged. I thought that would be done last Saturday. I talked to Mr. Grimes at that time and later on my wife was to come in to see me and the proposition I made to Mr. Grimes. I told him that perhaps we could put a mortgage on the property and raise some money and I told him I would contact my wife about that later on in the day, and I did. And my wife wasn't willing to mortgage the property. So, after she left she expressed the fear that in the case that I was convicted and had a prison term ahead of me that most of my retirement income would be taken away and I wouldn't have enough money to pay her alimony, which she seems so proud of, and make any substantial—

THE COURT: Just a minute.

Is Mr. Grimes around the building? He was here earlier, see if he is on the floor, will you please?

Q (By the Court, continuing): There actually isn't any

deed like you were telling me last week, is there? We have checked the Register of Deeds office and there is none recorded you and your wife.

A The statement I was talking about was a quit claim that she had instructions to not put on record, that's what happened to that.

Q Who has this deed?

A My wife has, it was given to her.

Q Both the attorneys say they don't know anything about it.

A I'm quite sure that Miss Papp didn't because she would have raised more heck over there the next day that—

Q Who drew this deed that you are talking about?

A It was drawn up in Mr. Grimes office and I was misled as to the intense and purposes of it or else I wouldn't have signed it.

I've been trying to get my wife to turn it over to me so I could destroy it. I told her it was illegal because it was signed before the property settlement was signed.

THE COURT: I think we better hold this a few minutes until Mr. Grimes gets in here or it will be more confusing than ever.

MR. KUTA: All right. Be seated, please.

THE COURT: You may be seated and we'll have Mr. Grimes in here in a few minutes.

- - -

THE COURT: Will you approach the bench, Mr. Stafford.

(Whereupon the respondent came forward.)

THE COURT: Mr. Grimes, in your absence, Mr. Stafford said he made some arrangements with you to defend him, because there are two serious charges here, I thought we ought to have some conformation.

MR. GRIMES: Your Honor, it is true I talked to Mr. Stafford on that and I was under the impression at that time that there was certain real estate in which he is a part owner, that a part of or could be applied to the attorney fee and, on the basis of that, I told him that I would be up here this morning and that I would represent him.

After checking with his wife who is the joint tenant and has the life interest, the right to possession the rest of her life in this property, and was informed by her that she would not enter into any agreement as far as signing this property over for an attorney fee for Mr. Stafford, I just don't see how he possibly can pay an attorney fee. And of course unless the Court would require me to do so, I would prefer not to be his attorney.

I feel also, your Honor, that inasmuchas I did represent his wife—I was not his attorney in the separate maintenance action which was just finished up here a few months ago—that there might possibly be a conflict of interest as far as I'm concerned in representing him, and, certainly without his wife's permission, I don't feel that I ethically could represent him, either.

THE RESPONDENT: Well, if your Honor, your Honor, if I might say a word, there is something strange about this. The wife, it's been all up until this morning she has been mighty interested in me getting Mr. Grimes to represent me, I don't know why the sudden change of attitude on her part. We didn't have any disagreement Saturday when she stated she wouldn't want a mortgage put on the property and I said, "Oh, very well, forget it," and that was all that was said.

THE COURT: Well, Mr. Grimes is your wife's attorney of record in this court. I think we'll have to believe him since she has, apparently, changed her mind.

THE RESPONDENT: Well, under the circumstances if I can't do any better I don't suppose anything on the statute books in the State of Michigan prohibits a man from coming his own attorney?

THE COURT: Well, I better explain it to you. You have a right to secure counsel for your defense. This does not mean that you can automatically have counsel at the public's expense. It is however a guarantee of your right to employ and have counsel providing you do so with in a reasonable time.

Now, secondly, you have an absolute right to act as your own counsel, and thirdly, you also have a right, upon a proper showing that you were unable to procure counsel, to have the Court appoint counsel for you. Before the Court will do this, however, you will have to take the stand and under oath convince the Court that you made an effort to secure counsel, that you have been unable to do so. If your inability is due to financial reasons, you will have to

convince the Court that you are a pauper and have neither the assets nor the income to pay the lawyer before any lawyer will be appointed at tax payer's!

Also, if you choose this route, the Court does not necessarily have to appoint the counsel you select.

Do you want to take the stand and attempt to convince me that you are financially unable to secure counsel?

THE RESPONDENT: Well, I can take the stand and tell you the truth. I don't know how convincing it will be to you, but I can very well do that. I would be glad to.

(Whereupon the respondent, William Stafford, Sr., was thereupon sworn as a witness in his own behalf, took the stand and testified as follows):

BY THE COURT:

Q We will start with your pension, Mr. Stafford. What is the total amount of your pension?

A Well, we figured it up, $119 Social Security, and $75 from the Veterans Bureau based on the fact that my income was less than $2,000, and I have a wife to support; and then I've been getting a pension from Chevrolet—my total pension was $39.49 less the deductions for Blue Cross which left me a net of $20.02 which I get from, which covers Blue Cross, and that figure amounted to about $214.

Q All right. Then you, under the separate maintenance decree, you have to pay $65 a month for your wife, is that right?

A That's correct, sir.

Q So you have $149 a month net, is that correct?

A That's what I figured out.

Q Now, you also own an old Chervrolet that's free and clear, is that right?

A That's right. My wife is wearing it out while I'm in jail.

Q Well, there isn't any reason why you can't sell it?

A No, I can sell it for $25.

Q That would raise around $100 or $200, something like that?

A Oh, yes, the car isn't worth over $200; I might get a $100 for it.

Q What about this mysterious deed you keep telling me for the house?

A Mr. Grimes has that.

MR. GRIMES: I have this, your Honor.

THE COURT: It's never been delivered, is that right?

MR. GRIMES: No; as I recall, your Honor, When we were negotiating a settlement in this matter Mr. Stafford was willing at that time to sign over his entire interest in this property to Mrs. Stafford and, thinking that that was what was going to happen, I prepared this so that we could accomplish it during the trial. But in the interim—I think you will recall—

THE COURT: —the settlement worked out otherwise.

MR. GRIMES: That's right.

THE COURT: —and the decree, so, this in effect is a nullity?

MR. GRIMES: That would be my interpretation of it. It has never been witnessed, notorized or dated.

THE COURT: And this man, generally speaking, has a half interest as a joint tenant subject to his wife's right to occupy the property, is that right?

MR. GRIMES: That would be my understanding.

Q (By the Court, continuing): And this property that is free and clear out on Fenton Road, is that right?

A That's right, and if I might have a word, if it becomes necessary I would like to have my wife come in under oath and she will tell you that that deed was delivered to her and she was instructed not to have it recorded.

Q Well, it isn't witnessed, dated or notorized, and her attorney admits that it was prepared in the course of a settlement that never went through. So, I'm not to worried about that.

A If I might add a word more, your Honor. She informed me the last time that she was in that she had already used that or was fixing to use it. She said she had been told, inasmuchas that's joint property, of course, that all insurance and other papers related to it in both names, that she was informed that since I'd been indicted for murder that

my signature wasn't worth anything if the house burned up, that my signature wouldn't be worth anything, she better get that changed over into her own name, the insurance papers and stuff like that. And I believe she told me that she had already done that.

Q Well, that gets into a matter that the Court ordered otherwise in the decree.

Now, there are two charges here of First Degree Murder. I couldn't let you out on bond if I wanted to, under the law. You aren't on this jury trial, and the first possible trial would be sometime in March in '62.

Are you willing to turn your pension over to the Friend of the Court and let him pay the $65 a month to your wife under the decree and let her give you $15 or $20 a month and let that accumulate for your defense?

A Yes, sir, I'll do anything that's fair.

Q Will you sell your car, too, and turn that in to the fund?

A Yes, yes. See, on this months pension that I get I owe my wife $130 alimony and I also owe Miss Elza Papp.

Q Well, we're not worried about creditors. We're worried about your defense. Now—

A Well, so be it, Judge, I'm willing—

Q Well, here's the problem very bluntly: I can see no reason for the tax payers to provide you with a free defense when you have some assets that you haven't exhausted. Now, if it turns out that the assets are exhausted and are insufficient I might at that time listen to a petition to

supplement your assets to get a reasonable fee. But I think it's in your interest—and you should exhaust everything you have before you ask the tax payers—

A Well, I'm perfectly agreeable to that because I have been a tax payer myself for 15 years and I'm very much in sympathy with it because I have had taxes to pay myself for the past 15 years and I would be the last man in Flint to try to defraud the public.

Q All right. Where do these checks come from and who do they come to?

A They come to me and my, my address at 727 Fenton Road. But since I've been here my wife is not staying in the house. She had the mail changed to go out to my son's out on the Ridley, 2425, the Ridley, and the checks are going there and I told my wife when they came in here to bring them in here to the jail.

Q Are they in your name?

A Yes, sir, all in my individual name because they are all federal checks and my wife doesn't have anything to do with that. One of the checks is the Social Security which I have earned in the past year and the other one is the Veteran's Checks under the new law that provides any veteran whose income is less than $2,000, to supplement their funds in the amount of $75 a month.

Q All right, it will be up to you then to give all of this money every month—including the pension checks—into the Friend of the Court's office and you should also sell the car and get that money in.

A Well, my son is trying to sell the car.

Now, on the other hand, I have some funds over at the city jail. The day the police were out there on Sunday they found a sheet metal, one of these small sheet metal boxes like you keep valuable papers on it, and I had a combination lock on it and they found that and they carried it out of the house and they said, "It's customary where they find valuables lying around in a condition like that, they always took possession of them," and in that box was my car tital and insurance papers, and $50 in cash. Now, that $50 in cash, if I could get it away from them, they—

Q Well, if I appoint a lawyer for you, he will take care of it. Now, do you have any other assets other than what you have told me about?

A No, sir, I don't have. The interest in the car—

Q The half of the $1,600, is there any of that left?

A No. The $764, no, there is none of that left. I had part of it stolen from me and I had some debts that I have paid and I have no money in the bank or elsewhere.

Q In other words, you have told me everything that you own?

A That's right, sir, outside of—

Q How about life insurance? do you have any life insurance?

A I have a paid up policy with General Motors after I retired, and while I was working I had a $5,500 policy, and after I retired each month, $100 in value comes off of that for a period of three years and until $1,294, and that stood for the rest of my life.

Q Is the $1,294 the death benefit or the cash value?

A Well, that is— I don't know, sir, how that policy reads.

Q Can you cash it, get the—

A No, I don't believe so. That must be a death, payable at death.

Q Well, I think we'd better find out.

A Well, that policy is over at the city jail in that box, that metal box.

Q All right, because if it has a cash surrender value you will have to cash it, if it's necessary, to meet your defense fund.

A I don't think we'll find it has any death, cash value until the death. I'm quite sure of that. We can find out about it if we can get that box into my possession, can get the papers, my own personal papers. Nothing in there joint with my wife or anything, and the money was all on my personal funds, also.

THE COURT: All right. I'll appoint Jerome Winegarden to represent you.

A Yes.

Q (By the Court, continuing): You will have to get these assets checked into the Friend of the Court's office.

A Well, in a case like this, I don't know, my wife or son will have to get that mail. I told my wife to wait until all of them were in and bring them over to the jail for my

signature to be kept here for safe keeping. So, either my wife or my son could bring those checks over.

Q What does your son do?

A He works as a maintenance man for the V8 Plant, Chevrolet.

Q How old is he?

A I think he was born in '28, that makes him 30.

Q 30 years old, is he a married man?

A Yes, he is married.

Q Got a steady job?

A Yes, he works six days a week, Chevrolet Plant, maintenance.

Q Any reason he can't help you with your defense?

A Yes. He stays in debt all the time, not being ordinary with a working man's home, he has a home worth about $20,000.

Q What has he got worth $20,000?

A He has a home that he is paying on that's worth about $20,000, but we won't look to him for help because any help he would give me would be grudgingly done. As a matter of fact, he was one of the factors in my wife and I separation.

THE COURT: Well, I'll appoint Jerome Winegarden as defense attorney, we'll give him the job of rounding up

these assets that you have and turning them into the Friend of the Court.

A That will be very good.

THE COURT: It's going to be up to you to see that it works.

A Well, it will work because I'm master of my own hell now, so—

THE COURT: All right. He will be over to see you and we'll adjourn this one week and all your rights will be protected.

All right, I'll appoint him in both cases and the arraignment will be on both.

Thank you.

\- - -

I hereby certify that the above is a true and correct transcript of the testimony and proceedings in the above entitled cause and the whole thereof on the above date.

Walter E. Gane /s/
WALTER E. GANE,
Court Reporter

I hereby certify that the above is a true record of the proceedings had in the above cause.

Donn D. Parker /s/
DONN D. PARKER,
Circuit Court Judge

Transcript of Proceedings, January 17, 1966, Post-Trial Evidentiary Hearing on Voluntariness of Confession

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE

COUNTY OF GENESEE

THE PEOPLE OF THE STATE OF MICHIGAN -vs- WILLIAM A. STAFFORD, Respondent	No. 18407

PROCEEDINGS HAD AND TESTIMONY TAKEN in the above entitled cause before the HONORABLE JOHN W. BAKER, Circuit Judge, on the Seventeenth day of January, 1966.

APPEARANCES:

OLLIE BIVINS,
Assistant Prosecuting Attorney
Appearing on behalf of the People

Defendant appeared in Pro Per.

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THE COURT: You may proceed. Do you want to sit over here, Mr. Stafford (indicating).

MR. BIVINS: If the Court please, this is in the matter of criminal case number 18407, People of the State of Michigan against William A. Stafford, pursuant to an order of the Court of Appeals of the State of Michigan, being file number 1228, entitled People of the State of Michigan, Plaintiff Appellee, against William A. Stafford, Appellant. It has been ordered that a hearing be held to determine the voluntariness of a confession given by Mr. Stafford pertaining to the crime of murder in the first degree.

At this time Mr. Stafford is present in court, and he is not represented by attorney, and I believe he will serve in pro per.

The People at this time are ready to proceed, Your Honor.

THE COURT: Are you ready to proceed, Mr. Stafford?

THE RESPONDENT: If it please the Court, since one week ago today when the hearing was postponed I decided that I would have at least one disinterested witness present in the court. I realize that I am in a hostile atmosphere, and as such I must protect my interests to the utmost. Last week I had my wife engage a private secretary through the Kelly Girl Secretarial Service. This lady presumably can qualify in shorthand—shorthand secretary. And I want her present here in this courtroom to take notes so that she can forthwith furnish me with a transcribed testimony. This becomes imperative so far as I am concerned because if this hearing here results in my case being remanded to the Appellate Court for further review I must submit the statement of facts and argument based on what has transpired here.

Now, I don't mean to cast any reflection on the truthfulness of this Court. But the past record as I have, and I do have records, shows that my rights have been reprehensibly trampled on, on other occasions. And, so far as the Court is concerned, I am just being careful back.

Now, this young lady is supposed to be here at 10:00 o'clock. I don't know whether she will be here or not. But, as I have stated, if I can't wait on her I ask for a postponement to a later date. Thank you, the Court.

THE COURT: We could wait until 10:00 o'clock if you wish. It is approximately 9:45 at the present time.

THE RESPONDENT: I might suggest, Your Honor, if the Court will do this, I have the location of this agency. I don't have the telephone number, but a call can be put down there and find out whether the lady is on the way. The lady, the name of this lady is Miss Doris Norrish(?). She was employed through this secretary agency.

THE COURT: Doris Norrish?

THE RESPONDENT: Norrish, N-O-R-R-I-S-H.

THE COURT: What is the name of the secretarial agency?

THE RESPONDENT: The Kelly Girl Secretarial Agency.

THE COURT: I see. Take a brief recess, and we will have them locate her for you.

(Whereupon at or about 9:47 o'clock in the forenoon a short recess was had.)

(After recess.)

THE COURT: Where would you like to sit?

THE KELLY GIRL: Is this Mr. Stafford? May I speak with him?

THE RESPONDENT: Do you wish this lady qualified and sworn, Your Honor?

THE COURT: That is not necessary, no. Are you ready now?

THE KELLY GIRL: Uh-huh.

THE COURT: The People?

MR. BIVINS: People are ready, Your Honor.

THE COURT: Mr. Stafford is ready?

THE RESPONDENT: Yes.

THE COURT: Proceed.

MR. BIVINS: The People would like to call Officer Darwin Storms, please.

THE RESPONDENT: I beg the Court's pardon. At this hearing I served notice to the Prosecuting Attorney the Defendant may take the stand and testify for the limited

purpose of making a record of his version of the past circumstances.

THE COURT: Well, maybe you should speak a little bit slower, Mr. Stafford, so the reporter can get this.

THE RESPONDENT: At this hearing I give notice to the Prosecuting Attorney the Defendant may take the stand and testify for the limited purpose of making of record, a record of his version of the facts and circumstances under which the confession was obtained. In this instance there's nothing said about me and my testimony. I know when a bunch of police get up there—

THE COURT: Well, just a minute. Now, under the procedure that we have here you have asked that these witnesses be brought here. And they are here, and we will proceed with their testimony. Then you will have a right to testify yourself.

THE RESPONDENT: Have I asked these witnesses be brought here?

THE COURT: This was my understanding from last week.

THE RESPONDENT: No. Last week I stated my right to represent myself as my own attorney, and the testimony of witnesses that would appear against me I would cross examine them.

THE COURT: Well, you can't cross examine unless they are sworn to testify.

THE RESPONDENT: Can't they offer any rebuttal? Can't they offer rebuttal after my testimony is taken? That looks to me like the due process of law.

THE COURT: If you prefer that we will do that that way.

THE RESPONDENT: What?

THE COURT: If you prefer that we will do that that way.

MR. BIVINS: It doesn't matter to the People either since he isn't represented by counsel.

THE COURT: All right. Do you want to be sworn?

MR. BIVINS: We will let him take the stand first.

THE COURT: Raise your right hand, please.

THE RESPONDENT: Yes, sir.

WILLIAM A. STAFFORD, a witness called by and on his own behalf in the above entitled cause, after first being duly sworn testified on his oath as follows:

THE COURT: Sit up here. Proceed.

THE RESPONDENT: Now, in this instance,—

THE COURT: Speak slowly and clearly, Mr. Stafford, so the reporters can get it.

THE RESPONDENT: Yes. I will. In this instance my

testimony concerns the voluntariness of this alleged statement given to the Police, and in relation to the facts and circumstances. The circumstances I can testify to because I was the victim of those circumstances. The alleged facts I am not acquainted with. The facts, so far as I know, are the ones that were presented in court by Mr. George Edwards who at that time was Lieutenant of Police.

On this particular day of November 5, 1961, during all that day beginning at some time early in the morning I knew nothing of what took place. According to the record that has been established I was picked up by the Police, carried to the Police Station, and this alleged confession obtained from me. I knew nothing of that confession until December the Seventeenth when Jerome Winegarden, my Court appointed attorney, gave me what he said was a copy of it. But I was held incommunicado in jail until the morning of my hearing in Municipal Court. And the Police themselves inadvertently supported my cause on the afternoon of about the third day, I believe. Anyway, the day before that I appeared in Municipal Court. I heard footsteps and voices approaching my cell coming down the corridor, and before they reached the cell I heard one of the voices ask a question: "Do you reckon the old buzzard has sobered up yet?" So, a moment later they paused in front of the cell. There was two officers—officers dressed in the uniform of city police. One of them was comparatively young man, and he—I guess only the one had conversation with me. He made some kind of opening remark. And I waived argument with him. I had nothing to say to him. Then, he asked me, he says: "Do your remember me?" Of course I was—I says: "No. I don't remember you."

MR. BIVINS: Just a moment, Your Honor. If the witness could perhaps confine this to a specific date so we would know generally what time or what period he is talking about.

THE RESPONDENT: I said it was on the day before my appearing in Municipal Court. I don't know what date it was. I wasn't in any position to know anything. Now, you've got the date, and quit interrupting me in my testimony. You'll have your chance. So, I was carried to Municipal Court the next morning. That is the first time that I heard anything about a voluntary confession, or any of that. At my appearance I asked Judge Freeman for a lawyer to represent me at the hearing. He said: "No, I can't give you a lawyer. You will get one after you are bound over to Circuit Court." And then he said: "We will proceed on the basis of what the People have." It was at that time that Lieutenant Edwards and Assistant Prosecutor Ed Joseph took over the—as master of ceremonies. And Lieutenant Edwards turned on me. He says: "You just sit tight now. Sit quiet. Just like a bump on a log. You have already made one statement. You will not make another." And he says: "You won't ask any questions of the witnesses." So, I sat through the whole ceremony and never drew a long breath.

MR. BIVINS: Your Honor, one moment. I feel that I must object because I think we are defeating the purpose for which we are here. Now, he is testifying as to things at the preliminary examination or at his arraignment, and that is not at issue today. I think—

THE RESPONDENT: It is relevant, Your Honor, because at that preliminary hearing the—this so called con-

fession was introduced into court; portions of it. Now, sit down, Junior, and let's have some justice administered here.

MR. BIVINS: Your Honor, I wish you would tell Mr. Stafford—I think that this isn't a playground, and that I suggest, sir, that you conduct yourself accordingly. You are here on the orders of a higher court to protect your rights.

THE RESPONDENT: Well, that's what I am demanding, and you will have those times—

MR. BIVINS: But there is a method to our madness whether you realize it or not.

THE RESPONDENT: Well, I have methods too.

MR. BIVINS: You are not performing.

THE COURT: Well, Mr. Stafford, this hearing this morning is limited to this Appellate Court order that the Defendant may take the stand and testify for the limited purpose of making a record of his version of the facts and circumstances under which the confession was obtained. Now, therefore you will limit your testimony to the period of time that the confession was obtained.

THE RESPONDENT: Well, if there is—you want to narrow it down to those limits we can make it a very short way.

THE COURT: All right.

THE RESPONDENT: I know nothing of the facts that

are alleged by Lieutenant George Edwards. I just disclaim any and all portions of that.

THE COURT: Do you wish to cross examine.

CROSS EXAMINATION

MR. BIVINS:

Q You do know Lieutenant George Edwards; Captain Edwards now is that correct?

A (by the Respondent) That was the first time—

Q Do you?

A I guess that I recognized him was at the preliminary hearing.

Q Do you recall ever seeing him prior to the preliminary hearing?

A No.

Q Do you recall seeing a person by the name of Elaine Benko prior to the—

A Yes.

Q Do you recall where you saw her?

A Well, I saw Elaine Benko every day for about six months before.

Q Did you see her on November Five?

A No.

MR. BIVINS: I have no further questions.

THE COURT: That is all you wish to testify to?

THE RESPONDENT: Yes. I just disclaim any knowlegable —

THE COURT: All right.

THE RESPONDENT: —facts.

THE COURT: You may step down.

THE RESPONDENT: Facts about this.

THE COURT: You may step down.

THE RESPONDENT: Thank you.

(Witness excused.)

THE COURT: Now you may proceed, Mr. Bivins, with your testimony.

MR. BIVINS: Officer Storms will be sworn, please.

DARWIN STORMS, a witness called by and on behalf of the People in the above entitled cause, after first being duly sworn testified on his oath as follows:

THE COURT: Will you give the name to the reporter, please?

THE WITNESS: Darwin H. Storms.

DIRECT EXAMINATION

MR. BIVINS:

Q Would you state your name for the record, please?

A Darwin A. (?) Storms.

Q What is your occupation, sir?

A Patrolman, Flint City Police Department.

Q Were you so employed in that capacity on November the Fifth, 1961?

A Yes, sir.

Q Did you have occasion to go to 727 Fenton Road on that date?

A Yes, sir.

Q Do you recall approximately what time you arrived there?

A I received a call about 10:46. Got there a couple minutes later.

Q And do you recall when you arrived there were you alone or were you in the company of someone else?

A I was working with a partner.

Q What was your partner's name?

A Officer Sauvageau, S-A-U-V-A-G-E-A-U.

Q When you arrived there did you have occasion to see a person by the name of William A. Stafford?

A Yes, sir.

Q Do you recall William A. Stafford's general appearance on that particular date?

A Right.

Q Did you have occasion to observe his movements on that date while you were there?

A Yes.

Q How long were you there?

A I was there from that time until 3:15 to 3:25.

Q At that time was Mr. Stafford present all during that time?

A No, sir.

Q Approximately how long was he present when you were there?

A I believe it was an hour. Right around then.

Q At that time did you have occasion to observe his movements, his physical movements?

A Yes.

Q Did you notice anything peculiar about his movements?

A No, sir.

Q Did you have occasion to talk to him?

A Yes.

Q About how close did you get to him at the time you were talking to him?

A I was approximately two feet away at the time at times.

Q Do you recall whether or not you smelled any intoxicating liquor on his breath?

A No, sir.

Q Do you recall whether or not his eyes were bloodshot?

A I don't recall.

Q Do you recall whether or not his speech was slurred?

A No, it wasn't.

Q Do you recall whether or not in his movements he staggered?

A No, sir.

MR. BIVINS: You may cross examine.

CROSS EXAMINATION

THE RESPONDENT:

Q I believe you stated this was about 10:46 in the morning of November the Fifth, '61?

A Yes, sir.

Q What position was this man in when you came into the house? Do you recall?

A What man was this?

Q The accused man. That's the only man I am talking to you about.

A Laying on the couch.

Q Laying on the couch. And did he get up off the couch and stir around any?

A Well, he did get off the couch, but I don't remember exactly.

Q What did he do after he got up?

A Sat back down.

Q Sat back down. All right. All right. You say you didn't smell any liquor on his breath?

A No, sir.

Q Did you see any liquor in the house?

A Yes, sir.

Q Where was this liquor?

A On a table.

Q Had the bottle been opened?

A Yes.

Q And some drank out of it?

A Yes.

Q All right. About what time did you -do you believe

that the Police left the home with the accused man? About what time in the morning was that?

A I don't remember.

Q You don't remember. All right. Did you contact the accused man at any time after he left his home and carried to the Police Station?

A No, sir.

Q You were not in contact with him anymore?

A No.

Q Did you happen to be one of the police officers that, as the Defendant testified to awhile ago, that passed through the jail corridor and stopped in front of the cell?

A No, sir.

Q Were you him?

A No.

Q All right.

THE RESPONDENT: I believe that's all at the present.

MR. BIVINS: I have no further questions.

THE COURT: You may step down, witness.

(Witness excused.)

MR. BIVINS: Elaine Benko.

ELAINE BENKO, a witness called by and on behalf of the People in the above entitled cause, after first being duly sworn testified on her oath as follows:

THE COURT: Sit right up here.

DIRECT EXAMINATION

MR. BIVINS:

Q Will you state your name, please?

A Elaine Benko.

Q And what is your address?

A I can't think. I've got it new. Two—203, isn't it, Ray?

Q Let me ask you this: what was your address on November the Fifth, 1961?

A I lived at 744 Fenton Road, across the road.

Q And that would be across the road from what?

A From Bill Stafford.

Q I see. Did you have occasion to go to Mr. Stafford's house on November the Fifth of 1961?

A I went over to borrow the car.

Q And what, approximately what time did you arrive there?

A It was right around ten, something like that.

Q Who was present at the time that you arrived?

A Well, this young couple laid on the floor and he was laying on the couch.

Q Now, did you have occasion to have any conversation with Mr. Stafford while you were there?

A I walked over and looked at the couple, and I didn't know 'em. And I didn't —

Q Just a minute, witness. Did you have occasion to have any conversation with Mr. Stafford while you were there?

A Well, then I tried to get him awake. And he woke up when I called the Police.

Q And what, if anything, did he say to you when he woke up?

A I asked him what was wrong with these people, and he says he didn't know.

Q Now, did you have any other conversation with him?

A No. He didn't say nothing.

Q Did he have occasion to get up and to move around in that particular room?

A No, he didn't.

Q At that time?

A No. He didn't get up.

Q How close to Mr. Stafford were you?

A Well, I stood across the room. I guess it was about ten feet.

Q I see. Did he appear to be intoxicated?

A No. He was sober.

Q Were you present when the police arrived?

A Yes.

MR. BIVINS: You may cross examine.

THE RESPONDENT: Thank you, Mr. Prosecutor. I says; thank you, Mr. Prosecutor.

CROSS EXAMINATION

THE RESPONDENT:

Q Now, Mrs. Benko, how long did you live there at that address? Is that 740, or 44?

A 44. 44.

Q 44. How long have you lived there?

A Couple years, I guess. I don't remember.

Q Couple years?

A After I moved there.

Q Didn't you move into that house about the first of July of '61?

A Yes.

MR. BIVINS: Now, I am going to object to this, that this is immaterial when she moved into the house.

THE RESPONDENT: It is material, because I am fixing to discredit the testimony of the witness.

THE COURT: Proceed.

Q (by the Respondent) Now, isn't it a fact, Mrs. Benko that you moved to that address about the first of July?

A It's about that, I guess.

Q So, you have not lived there a year or two, well, you — as a neighbor you became acquainted with William Stafford; is he one of your neighbors?

A What?

Q I say, you got acquainted with this William Stafford immediately after you moved there just like you did with other neighbors. Is that true?

A Yes.

Q Or, isn't it a fact, Mrs. Benko, that William Stafford was a heavy drinker, and that you yourself drank with him almost every day during the summer of 1961?

A Yes.

Q Is that true?

A That's right.

Q All right. And haven't you been in his company when he was drunk and when he was sober, or was he drunk on most —

A He was drinking, but I — I never knew you to be drunk.

Q Never knew me to be drunk? Well, did you ever get drunk yourself?

A No.

Q No?

A I don't get drunk.

Q No. Not anymore. Well, on this particular morning just what was your business over at the house?

A I went over to see if I could borrow your car.

Q Wasn't it to use the telephone?

A No.

Q I think it was.

A To borrow your car.

Q I think in one of the statements you made, — how many statements have you made in regard to this matter?

A Not any. I've forgotten about it.

Q Oh. Yes. One statement you said that you were over there to use the telephone. And another, in another statement you made you said —

MR. BIVINS: Your Honor, I am going to object to this. This is improper. And the witness is testifying. Mr. Stafford is attempting to testify for the witness.

THE COURT: Well, he can ask the question. He is trying to impeach the credibility. Isn't that true, Mr. Stafford?

THE RESPONDENT: There is a method in my questioning, Mr. Prosecutor.

THE COURT: All right. Proceed.

Q (by the Respondent) Now, Mrs. Benko, regarding that telephone incident, hadn't you been forbidden to use that telephone?

A Never.

Q Once before?

A Never.

Q Hadn't you sneaked in the house when the owner was absent and run up a long distance telephone bill to Owosso?

A No.

Q Supposing you —

A We were good friends at that time.

Q At that time. Why aren't we now?

A I don't — I know what you are cooking up now.

Q I'm not cooking up anything.

A You certainly are.

Q I want the facts. I want the facts. All right. You

said that you tried to wake the Defendant up when you came over?

A Yes, I did.

Q And you failed in that. He didn't — he didn't rouse up, did he?

A No.

Q All right. Now, just about when did he rouse up?

A When I called the Police.

Q When you called the Police. What did you do? Shout into the receiver and wake him up, or —

A No. I had hung up already.

Q What did you tell the Police? Do you remember?

A I told them that there was some people laying on the floor, and that I couldn't get you awake, and I didn't know what was wrong.

Q So, they said they would come and see; you didn't know what was wrong?

A No.

Q Didn't you have any idea what was wrong?

A No. It's a surprise to me. I walked in there with my two little bitty grandchildren.

Q And the man was perfectly sober. Is that true?

A He was out. I couldn't even get you awake.

Q Mrs. Benko, in the house at 744 Fenton Road, who was the head of that house?

A Well, it's Bessman (?) I kept house for.

Q You kept house for him. I see. Well, in the neighborhood there it seems that you wasn't known as a housekeeper; wasn't it generally known there in the neighborhood that you two were man and wife?

A What is that — any of that got to do with your murder of these people?

Q Well, it has a lot to do with these —

MR. BIVINS: I object to this.

A I don't see any sense in it.

MR. BIVINS: It is immaterial.

THE COURT: Well, —

THE RESPONDENT: I will —

THE COURT: I will sustain the objection to that question.

THE RESPONDENT: Very well, Your Honor. Let it be entered that this objection was sustained.

Q (by the Respondent) What time did the police leave with the accused man to go to the station? Do you remember?

A Well, half, three quarters of an hour after they came.

Q Pardon?

A A half, three quarters of an hour after they came.

Q Well, do you know what time they came in?

A It was around 10:00 o'clock.

Q Around 10:00. Did you go to the police station as a material witness?

A Yes I did. My granddaughters too.

Q Was the Defendant along in the car at the same time?

A Yes.

Q On the way to the police station did the Defendant say anything to anyone?

A No.

Q Did he act like he knew where he was, or that he cared anything about the situation? In other words, did he appear disinterested?

A I — how do I know. You didn't say nothing.

Q All right. And when you gave your testimony, your statement, where was the Defendant at that time? You made a statement to the Police, didn't you, after you got —

A You was sittin' there on your davenport.

Q Did I say anything during that —

A No.

Q Hu?

A No.

Q Did I appear interested in what was going on? Did I take any interest in the proceedings?

A No. You didn't say nothing.

THE RESPONDENT: Well, that will be all, Mrs. Benko. Thank you.

MR. BIVINS: Just a moment.

REDIRECT EXAMINATION

MR. BIVINS:

Q Mrs. Benko, after the police arrived you were in a position to observe the movement of Mr. Stafford, were you not?

A Yes. I stood right there in front of him.

Q Do you recall him getting up and going over and turning off a valve on a space heater?

A No.

Q And is there a space heater there?

A Yes.

Q Did you leave with the police officers?

A Yes.

Q Did Mr. Stafford move about the house in any manner?

A No. He sat right on the davenport.

MR. BIVINS: I have no further questions.

THE COURT: You may step down, witness. May this witness be excused, Mr. Stafford?

THE RESPONDENT: Pardon?

THE COURT: Do you have any further questions that you want of this witness?

THE RESPONDENT: That's — that's all.

(Witness excused.)

MR. BIVINS: The People call Lieutenant Burke.

THE COURT: Let's take a short recess.

MR. BIVINS: All right.

THE COURT: I have some other matters and arraignments.

(Whereupon at or about 10:15 o'clock in the forenoon a short recess was had.)

(After recess.)

MR. BIVINS: Lieutenant Burke.

FRITZ BURKE, a witness called by and on behalf of the People in the above entitled cause, after first being duly sworn testified on his oath as follows:

THE COURT: Give the reporter your name, please.

DIRECT EXAMINATION

MR. BIVINS:

Q Will you state your name, please?

A Fritz Burke.

Q And what is your occupation or employment as of November 5, 1961?

A Police Lieutenant.

Q And was that with the Flint Police Department?

A Yes, sir.

Q Did you have occasion to go to 727 Fenton Road on that particular date?

A Yes, I did.

Q And do you recall approximately what time you arrived?

A About 10:50 a.m.

Q And did you have occasion to see a person by the name of William Stafford there?

A Yes, I did.

Q And did you have any conversation with him?

A Yes, sir.

Q And will you tell the Court the circumstances of that conversation?

A Well, I arrived at 727 Fenton Road and met two officers at the front door. And I walked in, and I observed Mr. Stafford sitting on the sofa in the front room, and in the bedroom just to the left of the living room were two people lying on the floor. And I asked Mr. Stafford what his name was, and he stated it was — what his name was. And I asked him what was the matter with those people in the other room, and he said: "They are both dead. I killed them both with one bullet from that rifle standing over there by the door."

Q Now, that statement he made, was that voluntarily made prior to your having a chance to actually question him about it?

A Yes, sir. I —

Q Now, did you have occasion to observe the general demeanor of Mr. Stafford while you were there?

A Yes, sir.

Q And how close to his person were you?

A Oh, within two, three feet, I would say.

Q Did you smell any intoxicating liquor?

A No. I couldn't say that I did, no.

Q Was there any physical movement in the room by Mr. Stafford?

A Yes, sir. He walked around the room freely. On one occasion someone stated that it was getting very hot in

the room there. And there was a space heater, and I was going to shut the heat down. And he was sitting over on the sofa. He said: "Just a moment. I'll shut it off for you." And he got up from the sofa and walked over to the heater and closed the valve off on the space heater.

Q And how and in what distance did he walk from the couch to the space heater?

A Ten, twelve feet.

Q And in that distance did he stagger?

A No, he didn't.

Q Did he appear to be intoxicated when he walked?

A No, he didn't.

Q Was his speech slurred?

A No.

MR. BIVINS: You may cross examine.

CROSS EXAMINATION

THE RESPONDENT:

Q Lieutenant, when you were called out there did you engage the accused William Stafford in conversation, or did he open the conversation with you.

A I asked your name.

Q Yeah. And anything else you asked?

A I asked what was the matter with the two people in the other room.

Q I see. Well now, Lieutenant, in cases like that is that the proper place to quiz anyone?

MR. BIVINS: I object to this, Your Honor.

THE RESPONDENT: Yes, you will object. You object to the truth.

Q (by the Respondent) Is that the proper atmosphere to quiz an accused man?

MR. BIVINS: I object, Your Honor, as to what the proper atmosphere is. We are only interested in what the particular —

THE COURT: I think you should limit your questions to what occurred, Mr. Stafford, and not as to whether it is or is not a proper place.

THE RESPONDENT: Well, let it go on record that the objection was sustained.

Q (by the Respondent) You didn't smell any liquor on the man's breath, you said?

A No. I didn't smell any.

Q Did you see any liquor in the room?

A Yes.

Q How much liquor did you see, Lieutenant?

A I know there was one bottle sitting on the table there that I observed.

Q Had it been opened?

A Yes. It was partly full.

Q Partly full?

A Uh-huh.

Q Were you there at the time that the accused man was carried to the station?

A When he was what?

Q Carried to the police station.

A Carried?

Q Yes. I mean hauled.

A Yes. I was there when he left the room, yes.

Q Did you observe his actions out on the sidewalk in front of the house?

A Yes I did.

Q Who was with you at the time he left the house to go to the police car?

A Two officers.

Q Two officers?

A And a lady went down in the car too.

Q And a lady. Anyone else?

A Not with you, no.

THE RESPONDENT: That's all, Lieutenant.

THE COURT: Step down, witness.

MR. BIVINS: I have no further questions.

(Witness excused.)

MR. BIVINS: Captain Edwards.

GEORGE EDWARDS, a witness called by and on behalf of the People in the above entitled cause, after first being duly sworn testified on his oath as follows:

DIRECT EXAMINATION

MR. BIVINS:

Q Will you state your name please?

A George Edwards.

Q What is your occupation or employment?

A Presently I am captain of police with the Flint Police Department.

Q What was your employment and in what capacity on November the Fifth, of 1961?

A At that time I was Detective Lieutenant in charge of the homicide squad with the Flint Police Department.

Q Were you the officer, sir, in charge of this particular case?

A I was.

Q You knew a person by the name of William Stafford, is that correct?

A I do.

Q Now, did you have occasion to take a formal statement from William Stafford at any time?

A I did.

Q Do you recall the date?

A The date was November the Fifth, 1961. And the time was approximately 2:30 p.m.

Q Do you recall the place?

A The statement was taken in the offices of the Detective Bureau stenographer at that time.

Q And who was present beside yourself and Mr. Stafford, if anyone?

A The statement was taken by Ed Mason. Present was Detective Szabo, and Elaine Benko.

Q Now, at the time did you make—

A I'm sorry. I'm sorry, counselor. Elaine Benko was not present during Mr. Stafford's statement.

Q Did you make any promises to Mr. Stafford in order for him to make a statement?

A No, I did not.

Q Did you threaten him in any manner?

THE COURT: Mr. Bivins, I think you should ask what happened rather than to lay—ask these leading questions.

Q (by Mr. Bivins) I will ask you this: —strike that. Would you give us the questions that you asked—no, strike that. Will you tell us what, if anything, did you say to Mr. Stafford?

A Yes. At the beginning of the statement I advised Mr. Stafford that we wanted to take a statement, the statement must be the truth; that he was under arrest for a felony in the State of Michigan, that anything that he said could be used for or against him. And then I believe that may not be all the wording in the—in the beginning of the statement. But generally that is it. And then we went into the questioning. And I asked his name, his address and his age. And then I went into the questioning of the statement as to what had happened at 727 Fenton Road.

Q Do you remember generally the questions that you asked and the statements that the—the answers that he gave you?

A I don't have a copy of the statement, counselor, not with me. That's in the possession of Mr. Mason.

Q Could you refresh your memory by looking at that statement?

A Yes.

(Whereupon Mr. Bivins hands the witness a document.)

Q Do you recall the questions and do you recall the answers?

A Not verbatim; in general.

Q I see. But is that the statement that was taken at the time that you questioned Mr. Stafford (indicating)?

A Yes, sir.

Q Now, at that time how close were you to Mr. Stafford?

A Probably a distance of two, two and a half feet.

Q Could you detect the odor of any intoxicating liquor on his breath?

A Yes, sir. I have a recollection of smelling something on his breath. Whether it was specifically at that time or previous to it I couldn't—I couldn't definitely recall.

Q At this time of the formal statement did he appear to be intoxicated?

A No, sir.

Q Did he appear to be alert?

A Yes, sir. Very much the same as he is here today, with the exception of personal appearance.

Q Well, did he appear to understand what the questions were that you asked him?

A Yes, sir.

Q Did you understand his answers?

A Yes, sir.

Q Did he appear to have any difficulty in speaking or in answering your questions?

A No, sir. I had trouble understanding Mr. Stafford to

the extent that I have here in the courtroom today. He spoke rapidly. Other than that I had no trouble.

Q Did he voluntarily agree to answer your questions?

A Yes, sir. There were no coercions to make him answer my questions.

MR. BIVINS: You may cross examine, Mr. Stafford.

THE RESPONDENT: Thank you, Mr. Prosecutor.

CROSS EXAMINATION

THE RESPONDENT:

Q Mr. Edwards, how many quizzings did the accused William Stafford undergo in relation to this matter?

A Total of four.

Q Pardon?

A Total you mean by myself?

Q Yes.

A A total of four.

Q Four. And at what time was the first one on that day? Do you recall?

A Shortly afternoon.

Q Shortly afternoon?

A It was 12:00 or 12:15.

Q Then, we had another one, supposedly, at about 2:30 p.m.? Do you recall if there was one later on in the afternoon, or was that at 2:30 the last one?

A 2:30 was the last one.

Q Well, let's see. We must have had about three different questionings in about an hour and a half. I must ask you direct, Mr. Edwards: was the accused William Stafford drunk?

A Not in my estimation.

Q Not in your estimation. Well, aren't there certain legal sanctions; methods in the State of Michigan for ascertaining the extent of sobriety, or the lack of it, in any individual?

A There are accepted procedures.

Q Well, why wasn't they used?

MR. BIVINS: I object to this, Your Honor, as—as immaterial and it's incompetent.

THE COURT: You may ask the question if any such were used. But as to why they were not used, if they were I don't know whether they were or not.

THE RESPONDENT: Well, that's what I want to ascertain. There was more evidence in this cause to indicate that the Defendant was drunk at the time that he went to the police station. However, it's not being introduced in this trial — in this hearing. So, I ask Mr. Edwards, and he admitted that there was such procedures. And now I ask him the question:

Q (by the Respondent) Was they used in this case?

A No, they were not.

Q In other words, Mr. Edwards, do you possess any specific qualifications that will enable you to bypass the legal sanctioned procedures and set up your own personal opinions?

MR. BIVINS: I object to this.

THE RESPONDENT: This is probing cross examination, Mr. Prosecutor.

THE COURT: You can answer the question.

A Would you repeat the question, please?

Q (by the Respondent) Yes I will, slowly. Mr. Johnson will be—

THE COURT: Mr. Johnson will read it back.

Q (by the Respondent) Mr. Edwards,—

THE COURT: Just a minute. We will have the reporter read it back for us.

(Whereupon the Court Reporter read back the last question asked.)

A I would say yes to that question.

Q (by the Respondent) That would be yes. Very well, Mr. Edwards. Do you recall the dead William Howard at

the autopsy? Was there evidence that was introduced that his blood alcohol content in his blood was dangerously high?

MR. BIVINS: I am going to object to this, Your Honor. This has nothing to do with the confession.

THE COURT: I will sustain the objection.

THE RESPONDENT: Let it be shown that objection was sustained.

Q (by the Respondent) Now, you made mention of two other witnesses, Mr. Edwards. Sergeant Szabo, and the Police Reporter?

A Yes.

Q Those were the only two witnesses?

A Yes.

Q What role did they play? Anything other than witnesses?

A Yes. Mr. Mason is the one who took the questions and answers down in shorthand, and subsequently transcribed them.

Q How about Sergeant Szabo? Did he assist in the questioning, or did he leave that up to you?

A That was left up to me.

Q In other words, he was just your understudy at the time. Is that correct?

A He was a witness to the statement.

Q All right.

THE RESPONDENT: I believe that's all, Mr. Edwards. Thank you.

MR. BIVINS: One more question, Captain.

REDIRECT EXAMINATION

MR. BIVINS:

Q At any time during your questioning of Mr. Stafford did he request the assistance of counsel?

A No, sir.

MR. BIVINS: I have no further.

EXAMINATION

THE COURT:

Q Was there anything mentioned about counsel whatsoever, Captain Edwards?

A Yes, sir. After Mr. Stafford's arraignment, to the best of my recollection, he informed me that he had spoken to I believe attorney Grimes. I'm not positive that that was the name. This was on the occasion after his first arraignment; he had been in Municipal Court on arraignment.

Q Now, was there any such conversation prior to the arraignment, or in your remarks to the Defendant Mr. Stafford?

A No, sir.

Q Prior to your interrogation was any remark made by Mr. Stafford at any time prior to the arraignment about an attorney?

A No, sir.

MR. BIVINS: I have no further questions.

THE COURT: You may step down, witness.

(Witness excused.)

MR. BIVINS: Edwin Mason.

EDWIN MASON, a witness called by and on behalf of the People in the above entitled cause, after first being duly sworn testified on his oath as follows:

DIRECT EXAMINATION

MR. BIVINS:

Q Will you state your name, please?

A Edwin Mason, Jr.

Q What was your occupation or employment on November the Fifth, 1961?

A Detective Bureau Reporter, Flint Police Department.

Q And you understand the method of transcribing and taking down shorthand notes, don't you?

A Yes, sir. I am. I employ the Gregg system.

Q How long had you been employed in this capacity?

A At that time since March of 1960.

Q I see. What schools did you attend for this particular profession or employment?

A I received my Gregg system of shorthand, the majority of my typing experience at Flint Community Junior College.

Q And approximately how many formal statements have you had occasion to transcribe as of November the Fifth of 1961?

A I would say as of that time probably forty to fifty such statements, plus numerous records over the period in criminal cases.

Q Now, did you take a formal statement from William Stafford on that date?

A Yes, sir.

Q Do you recall the date?

A Yes, sir, I do.

Q What was the date?

A November 5, 1961.

Q Do you recall approximately the time?

A The approximate time?

Q Yes.

A Yes.

Q And what is that?

A Approximately 2:30.

Q Now, who else was present beside yourself?

A At which statement was this?

Q At the time of the formal statement.

A Mr. Stafford.

Q Yes.

A Now, Captain Edwards was present, now Sergeant Szabo, the Defendant Mr. Stafford, and myself.

Q Now, how close were you to Mr. Stafford at the time you took that particular statement?

A The width of a standard sized desk. Approximately two and a half feet.

Q I see. Now, did you smell any intoxicating liquor on the breath of Mr. Stafford at that time?

A No, sir, I did not.

Q Did he appear to be intoxicated?

A No, sir. He did not.

Q Were his words slurred?

A No. At points his speech was rapid. His speech was rather sporadic. At points it would be hesitant and slow, and then it would be rapid.

Q Did he seem to be very cooperative in giving this statement?

A Yes he did. Cooperative, and remorseful.

Q Did he have a tendency to ramble in giving his statement?

A No, sir. His answers were portioned (sic).

Q I want to show you People's Exhibit Twenty that was introduced into evidence in the trial of this matter on March 14 of 1962 (indicating) for purposes of identifying that at this time. What is that exhibit, sir (indicating)?

A This is a transcribed statement of William A. Stafford that I transcribed myself, identified by me by initials being at the lower left hand corner of each page. It's a statement containing five pages.

Q And that is a statement that you transcribed. Is that correct?

A Yes, sir.

MR. BIVINS: Your Honor, I would like to have this statement introduced into evidence at this particular hearing. I offer specifically for purpose of this statement. (indicating)

THE COURT: Will you show it to Mr. Stafford, please?

THE RESPONDENT: This is a statement that I discredit entirely. I disclaim that being the factual statement. Not casting any reflection on Mr. Mason. But that statement is too pat to be given by a drunk man or a sober man. A sober man never gives a statement like that.

THE COURT: This exhibit may be received in evidence.

MR. BIVINS: I'd like the contents into evidence, Your Honor.

Q (by Mr. Bivins) Mr. Mason, would you read that exhibit, please (indicating)?

A Yes, sir. "Statement. This is a statement of William A. Stafford, male, white, sixty-seven years old, of 727 Fenton Road; statement being taken in conjunction with murder complaint number 13256, of 11/5/'61; statement questioning being conducted by Lieutenant George Edwards on 11/5/'61, at 2:30 p.m., in the offices of the Detective Bureau, witnessed by Detective Louis Szabo, taken in shorthand and transcribed by Edwin Mason, Detective Bureau Reporter. Question: Mr. Stafford, we wish to take a statement from you regarding events that occurred in connection with the double shooting of William Howard and as yet unidentified white female at 727 Fenton Road—

THE KELLY GIRL: Will you slow down? Do you want me to take the statement down, or do you have a copy?

THE RESPONDENT: I have a copy. I guess it's the same thing.

THE COURT: Do you want to present those? Then we can receive that in evidence without reading it in the record.

THE RESPONDENT: Yes. That would be all right, Judge Baker. They are identical.

THE COURT: All right. Thank you.

Q (by Mr. Bivins) Would you continue?

A Should I continue?

Q Yes. Please.

A "—727 Fenton Road, and which are reported on complaint number 13256. Any statement that you give us must be the truth to the best of your knowledge and recollection; it must be given freely and voluntarily without any force or threats or promises on our part, and it must be given by you with the—with the realization that you are under arrest to this department on a charge of murder which is a felony under the state laws of Michigan, and that anything that you say in this statement may be used for or against you if this matter should come to trial in criminal court. Knowing these things to be so will you give us a statement? Answer: Yes. Question: Will you state your name, age and address, please? Answer: Well, my name is William A. Stafford, I am sixty-seven years old, I live at 727 Fenton Road.

Question: Are you employed Mr. Stafford?

Answer: No, I am retired, I retired in '59.

Question: And are you married?

Answer: Yes.

Question: What is the name of your wife?

Answer: Cornelia Stafford.

Question: Were you acquainted with one William Howard during his lifetime?

Answer: Yes.

Question: And how long had you known him?

Answer: Oh, for probably a year.

Question: Did you see him in the company of a white female during the early morning hours of today?

Answer: Yes.

Question: Did you know who this woman was?

Answer: No, I do not.

Question: Did you see William Howard during the evening hours of last night?

Answer: Yes, Howard and I were making the rounds of the bars and other places.

Question: Where did you meet Howard?

Answer: Well, I believe that where we first got together was at Bob's Bar down on Court Street.

Question: Do you know approximately what time this was?

Answer: Well, it must have been midnight or after. Approximately—yes.

Question: Where did you go after meeting him?

Answer: Well, I don't know just where we went. He was a little bit more sober than I was and he drove the car and we went here and there and had a few drinks.

Question: And was this your car that he was driving?

Answer: Yes, that's right.

Question: Do you know how many bars you went into?

Answer: No.

Question: Can you tell me how much you drank?

Answer: Well, as my memory serves me, now I was drinking double shots of liquor and probably during the night I drank three or four altogether. And so was Howard, he was drinking the same way, but I don't recall—I don't recall where we picked up this woman.

Question: Did you drink anything other than whiskey?

Answer: No, I don't believe so.

Question: During the late evening hours or early morning hours of today, did you and Howard meet a white female in one of the places that you were in?

Answer: Yes, we must have, I don't recall just where it was.

Question: Did she accompany the two of you to your home?

Answer: Yes.

Question: And was there any drinking done after you got to your home?

Answer: No.

Question: Was there any trouble between the three of you?

Answer: Oh, we got into an argument, kind of a family row.

Question: Were any blows exchanged?

Answer: No.

Question: And were you threatened in any way?

Answer: Yes, I was threatened.

Question: And how was this?

Answer: Well, I was told that if I didn't keep my yap shut, I would get my block knocked off.

Question: And who told you this?

Answer: Well, Howard did.

Question: Did he have any kind of weapon?

Answer: No, I don't think so.

Question: And what was this argument regarding?

Answer: Well, actually I don't know what this argument was about, but it was just a drunken brawl.

Question: Was there any discussion between you and Howard or the woman regarding any acts of intercourse?

Answer: No, no there wasn't. I think that Howard had had the woman just previous to what happened there.

Question: Did Howard and the woman enter the bedroom of your home?

Answer: Yes, they were in the bedroom with my permission.

Q And how long were they in there?

Answer: Well, that is pretty hard to pin down definitely, it must have been several minutes.

Q And was the door closed during this time?

Answer: Well, there was no door to the bedroom there was just drapes across the doorway, the drapes were pulled of course.

Question: After Howard and the woman had been in the bedroom, did you enter the bedroom?

Answer: Oh, not before I fired the shot.

Question: Had you opened the drapes to the bedroom?

Answer: Well, actually the drapes weren't closed.

Question: Did you see the two of them in the bedroom?

Answer: Yes.

Question: What were they doing?

Answer: Well, at the time that I fired the shot they were embracing each other and the one bullet killed the two of them. I only fired the one shot.

Question: And where were they at this time?

Answer: Well, they were standing in the bedroom, right at the foot of the bed.

Question: Were they facing you?

Answer: No, the woman was facing me and the man had his back to me.

Question: Before you fired the shot, did you talk to either of them?

Answer: Oh, we had had an argument like I said awhile ago.

Question: I mean after they had been in the bedroom?

Answer: No, I don't believe so.

Question: What type of weapon did you fire the shot with?

Answer: That was a three 0 three British Enfield Rifle.

Question: And where did you keep the rifle?

Answer: Well, actually it had been at various places around the living room. I never had any particular place to keep it.

Question: And where was it this morning, when you used it?

Answer: Well, if I recall correctly, it was standing alongside the living room door—the outside door. That is to the best of my knowledge.

Question: Do you normally keep this rifle loaded?

Answer: Well, normally no. I keep shells in the box magazine, but I have to rack the bolt to load the rifle. Normally I don't keep it loaded because it is a little bit dangerous—that is all.

Question: Do you recall racking the bolt this morning prior to shooting?

Answer: No, I don't remember, but indications are I did. However, I am not positive.

Question: After the shot was fired, what did you do then?

Answer: Well, I laid down across the bed and went to sleep. It was in the early morning hours.

Question: At about what time?

Answer: Well, it could have been about 4:00 or 5:00 o'clock in the morning.

Question: And did you lay down in the same bedroom where the shooting had happened?

Answer: Yes.

Question: Did you go to sleep?

Answer: Yes.

Question: And what time did you awaken?

Answer: Well, it must have around 8:00 or 8:30 this morning.

Question: And where did you go?

Answer: Well, I went and got in the car and took a drive over on Glenwood Avenue and then back to the house.

Question: What did you do after returning to the house?

Answer: Well, I laid down on the sofa there and this Elaine Benko that was in here earlier, she come over to the

house. She is all the time running over there and using the telephone or something. So she came over there and found those dead bodies there, so she called the police.

Question: Had you made any notification to any police officer regarding this shooting?

Answer: No, I don't think so.

Question: After the shooting occurred and before you laid down to go to sleep, did you have anything else to drink?

Answer: No.

Question: Did you have anything to drink after returning to your home after 8:00 or 8:30 this morning?

Answer: Well, I went over on Glenwood Avenue and got a pint of liquor from a bootlegger over there. As far as I know, I had only taken a couple of drinks out of the bottle.

Question: At the time that you fired the one shot, did you have the weapon pointed toward a particular person?

Answer: Well, as results show—well,—I must have had it pointed at both of them. However, the boy was a friend of mine and I didn't want to kill him, but the woman I didn't care about her. I had no enmity towards the man.

Question: After the shooting occurred, did you make any effort to move either or both of the bodies?

Answer: No, I did not.

Question: How long had you owned the rifle that was used?

Answer: Oh, I guess a couple of years, something like that. I bought it out at the South Flint Plaza, they had a bunch of those rifles for sale out there.

Question: Have you ever fired the rifle before?

Answer: Oh, I doubt it. In don't recall if I ever did.

Question: Has any one else fired it that you know of?

Answer: No.

Question: Has this statement been the truth to the best of your knowledge and recollection?

Answer: It certainly has.

Question: Has it been given freely and voluntarily without any force, threats, or promises on our part?

Answer: Yes sir, yes sir. I am trying to cooperate to the best of my ability. I must admit that I am guilty of murder as much as I regret.

Question: That is all."

MR. BIVINS: You may cross examine.

CROSS EXAMINATION

THE RESPONDENT:

Q Mr. Mason, on page four about the ninth question down, in the answer, "what did you do after returning to the house?

Well, I laid down on the sofa there. And this Elaine Benko that was in here earlier, she come over to the house. She is all the time running over there and using the telephone or something."

Now, Mr. Mason, you took dictation from Mrs. Benko, did you?

A Yes, sir. I did.

Q Now, wasn't that the statement that she made in her statements? Did she make such a statement as that in her statement?

A Mr. Stafford, without referring to the transcript of Mrs. Benko's statement it would be difficult for me to recall any statement she made, because I took hundreds of these statements when I was employed at the Police Department.

THE COURT: Do you have that copy here? You may if you want to refer to that.

MR. BIVINS: Do you have that?

A I do not have that copy. I believe Captain Edwards had a copy of Elaine Benko's statement.

MR. BIVINS: I have a copy here (indicating), and you may refer to it.

A Should I read this over, sir, too? Are you specifically asking—

Q (by the Respondent) I would like to know if you find this statement in her copy (indicating).

A About what? As to what, sir?

Q Well, I just made the charge—I was credited with giving an answer, "well, I laid down on the sofa there, and this Elaine Benko that was in here earlier, she come over to the house. She is all the time running over here and using the telephone."

Did she make a statement on that order in here?

A Could I examine this and answer?

Q Pardon?

A Could I examine this and then answer?

Q Sure. Yes.

A On page two of the statement of Elaine Benko, female, white, age forty-four, 744 Fenton Road; this statement was taken in shorthand by me at the Detective Bureau at 1:35 p.m. on November 5, 1961. On page two of that statement the question that you point out was conducted by Louis Szabo and witnessed by the then Lieutenant George Edwards. Detective Szabo's question was: "Could you tell us what happened or what you saw when you got to his house?", and his (sic) answer—or, excuse me. Mrs. Benko's answer: "Well, I knocked and knocked and nobody answered. And I am in the habit of walking right in and using his phone and not waiting for him, so I thought—lots of times I have found him sleeping. So I just thought I would peek in and look. And he was sleeping." That was her answer in reference to the telephone, use of the telephone. I have not read the rest of the statement to refresh my memory. If you wish me to I would.

Q Well, what I was asking was her excuse for coming over to the house on that particular morning.

A This is not what she stated in the statement, Mr. Stafford. The formal statement, she said: "I am in the habit of walking right in and using his phone and not waiting for him." She did not specifically state that in here.

Q Well, very well. We can get on to something else, Mr. Mason. Now, you say that you have taken testimony about forty occasions of this kind?

A Prior to 1961?

Q Yes.

A Probably from the time of my employment with the Police Department it would be in excess of two hundred statements.

Q Well, during that experience, Mr. Mason, did you ever find a man as plastic in the hands of the police?

MR. BIVINS: I object to this, Your Honor.

Q (by the Respondent) Did you ever get the testimony of a sober man that was as pat as that?

A Would you want me to answer?

THE COURT: You may answer the question.

A I would like a definition of your term plastic before I—

Q (by the Respondent) Plastic. That means like putty; a man under domination of someone else.

A I have seen many witnesses charged with a felony crime who were remorseful and cooperative at the time of

statement taking. And in fact they have stated they have a burden on their chest, and they want to get it off their chest. Yes, sir. My answer would be yes; I have seen many people who are cooperative.

Q He made no such statements as that, did he? He didn't say there's something on his chest that he wanted to unload forthwith, did he?

A Excuse me, Mr. Stafford, but he did. The last answer in his statement—do you want me to read it again, or you want me to restate that answer as I remember it?

THE COURT: You may read the answer.

A "Yes, sir. Yes, sir. I am trying to cooperate to the best of my ability. I must admit that I am guilty of murder as much as I regret."

Q (by the Respondent) Well, in cases of that kind, today this is the same man four years later; he is not drunk today, he is making statements forthrightly, and objections from the Prosecutor—

MR. BIVINS: I object to this.

Q (by the Respondent)—because he is fighting for his rights.

MR. BIVINS: Your Honor, I object to this. This has nothing to do with what happened four years ago today.

THE RESPONDENT: In the past four years a man has recovered his health. God has given him wisdom, and he is giving him courage. That is what I am using here.

THE COURT: Just a minute, now. You want to ask anymore questions of this witness?

THE RESPONDENT: Well, only one more.

Q (by the Respondent) Mr. Mason, as a reporter for the Detective Bureau your work is under the guidance of Mr. Edwards at that time?

A No, sir. My work was under the guidance of anyone who headed up the squad.

Q Very well.

A Previous to that time it was my work. But I did not work exclusively for Mr. Edwards.

THE RESPONDENT: That's all I want to know. That's all.

MR. BIVINS: Your Honor, I have one more question, Your Honor. I have no more for you, Mr. Mason.

(Witness excused.)

MR. BIVINS: Detective Louis Szabo.

LOUIS SZABO, a witness called by and on behalf of the People in the above entitled cause, after first being duly sworn testified on his oath as follows:

DIRECT EXAMINATION

MR. BIVINS:

Q Will you state your name, please?

A Louis Szabo.

Q And what was your occupation or employment on November 5, 1961.

A Detective with the Flint Police Department.

Q And were you one of the investigating officers in this particular case?

A Yes, I was. I was assigned to work with Lieutenant George Edwards.

Q Now, did you have occasion to be present at the taking of a formal statement from Mr. Stafford?

A I was.

Q Do you recall the date?

A Yes. The first time I was present at 12:12 p.m. on November 5, 1961. This isn't what we — what we referred to as a formal statement. Later on that afternoon at 2:30 p.m. the same day a formal statement was taken.

Q And at that time who was present beside yourself and Mr. Stafford, if anyone?

A Edwin Mason, Detective Bureau Reporter.

Q Who else?

A At the time of the formal statement of Mr. Stafford just the four of us; Mr. Stafford, Mr. Mason, Lieutenant Edwards and myself.

Q How close did you get to Mr. Stafford at the time of the formal statement?

A That would be within three, four feet.

Q Did he appear to be intoxicated?

A No, sir. He did not.

Q Was his speech slurred?

A No. Other than that he spoke a little rapidly from time to time.

Q And was he coherent at all times during the question and answer process?

A He appeared to be. Yes, sir.

MR. BIVINS: You may cross examine.

CROSS EXAMINATION

THE RESPONDENT:

Q Sergeant Szabo, at that time your role was that of a witness, was it not?

A During the formal statement, yes, sir.

Q Well, about how many statements were given between the noon hour and 2:30? Do you recall?

A As I recall I was present; Lieutenant Edwards and myself talked to you at 12:12 p.m. on November 5. And then this formal statement was taken from you in my presence at about 2:30 p.m. the same day.

Q But what I was getting at, Sergeant Szabo, do you

know how may times this grilling was resumed during that period of time? Once, or twice, or —

A These were the two times that I am aware of that you were talked to and that I was present.

Q That was two times before the formal?

A No, sir. Just one time prior to the formal, at 2:30.

Q In the formal statement you did no questioning yourself, during the formal?

A This I couldn't say unless I checked the statement, sir. I may have had occasion to ask a question. Sometimes we do.

Q I have one more question, Sergeant Szabo. Your work was done under the direction of Lieutenant Edwards — at that time it was Lieutenant Edwaards; in other words, he was your superior?

A Yes, sir.

THE RESPONDENT: That's all I want.

MR. BIVINS: I have no further questions.

THE COURT: You may step down, witness.
(Witness excused.)

MR. BIVINS: People rest, Your Honor.

THE COURT: Are there any other witnesses, Mr. Stafford, that you wish to call at this time?

THE RESPONDENT: Yes. I wish to put William Staf-

ford, Jr. on the stand in rebuttal of Mrs. Benko, and — what's the other policeman? I forget his name.

THE COURT: Is there another officer that you want now?

THE RESPONDENT: Pardon?

THE COURT: Is there another officer?

THE RESPONDENT: Yes. The — the officer — I wanted him to be in rebuttal of the officer that called at my house and stated that he talked to me up there.

THE COURT: I see. But that was —

THE RESPONDENT: His testimony will also be in rebuttal of Mrs. Benko.

MR. BIVINS: Is he speaking of Officer Storms?

THE RESPONDENT: That must have been him.

THE COURT: Lieutenant Burke?

MR. BIVINS: Or, Lieutenant Burke.

THE RESPONDENT: No. It was Officer Storms.

THE COURT: All right. You want to be sworn, Mr. Stafford?

WILLIAM STAFFORD, JR., a witness called by and on behalf of the Defendant in the above entitled cause, after first being duly sworn testified on his oath as follows:

DIRECT EXAMINATION

THE RESPONDENT:

Q William Jr., will you tell us what happened on the Fifth day of November, 1961, in connection with this?

A William A. Stafford, Jr.; residing at 2425 Nerredia Street, Flint, Michigan; age thirty-six years; DOB (sic) 9/13/'29.

Q And your relationship to the Defendant?

A Son.

Q Now, will you please tell us what transpired to your knowledge on this Sunday morning of November the Fifth, 1961?

MR. BIVINS: Your Honor, I am going to object to anything that may be going into the merits of this case. We are not here to retry it. Now, I think that the witness should be confined to any light that he may be able to throw in reference to the confession, the formal statement, or anything of that nature, in order to stay within some confine of this purpose of this particular hearing.

THE COURT: I think that's true.

THE RESPONDENT: If it please the Court, is justice necessary to establish the mental condition of this patient before this — before this grilling as it is to substantiate the grilling itself? Now, the mental condition of this man is just as pertinent to the truth as anything that you put down by a Court Reporter.

Mr. BIVINS: Well, we haven't seen whether this witness is qualified to state the mental condition of Mr. Stafford, and I renew my objection. And we are not staying within the scope of the purpose of this particular hearing.

THE COURT: Well, I think he is confining it to the date in question. Proceed with the question, Mr. Stafford, and we will see what it will do.

Q (by the Respondent) Now, on this particular morning how come you undertook to make the trip to your father's house on Fenton Road?

A I received a telephone call at my home telling me to come over there, that there was something wrong. Who made this telephone call I — I don't know. Evidently it was someone in the — in the neighborhood.

MR. BIVINS: I object. I object to this.

THE COURT: Well, proceed to the other question, Mr. Stafford.

Q (by the Respondent) Well, what did you find when you arrived at 727 Fenton Road?

A I walked in the front door, and he was sittin' on the couch. There was two police officers standing in the living room.

Q Was this Mrs. Elaine Benko present?

A Yes.

Q And what happened? Did you try to talk to your father?

A Yes. I — I spoke to you.

Q Did you get any response from him?

A Yes.

Q What did you ask him, and what did he say?

A Well, when I entered the living room I observed the two bodies in the north — northwest bedroom, and you sittin' on the couch. I asked you what happened. And as I recall you didn't answer me as to what happened. You said something about — it's about time I got there, or something to this effect. I don't — I don't — I don't fully remember, although you didn't — you — you didn't — you didn't answer my direct question as to what had happened, or occurred.

Q Did you hear the Lieutenant? Was he one of the men who was present in the living room when you went in?

A No.

Q He was not there, hu?

A No.

Q Well, did you hear the — any of the police or Mrs. Benko trying to talk to the accused William Stafford?

A No. At that particular time there was no one engaged in conversation with you. Not while I was present in the room there wasn't.

Q Didn't the police ask you to leave the house?

A Yes. Upon the arrival of Lieutenant there, he asked me if I would wait outside.

Q Did you identify yourself to him?

A I did.

Q At that time wasn't you a member of the Genesee County Law Enforcement?

A I was.

Q You was. Did he know that you identified yourself to him?

A Yes. I was in the — I was in uniform.

Q You was in uniform. Did you identify yourself to this Lieutenant as —

A Your son.

Q My son?

A I did.

Q How many times did they ask you to leave the house before you did?

A They only asked me on the one occasion, and I asked them why.

Q You asked why. Did they ask Mrs. Benko to leave?

A No.

Q Do you consider yourself a material witness, as much so as she was?

MR. BIVINS: I object to the conclusion of this witness.

THE RESPONDENT: Yes, you object. You object to anything that has the element of truth in it.

THE COURT: I will sustain that objection.

Q (by the Respondent) I — William Jr., you was there when the Police carried your father out of the house, were they (sic) not?

A Yes.

Q How many police officers were they in the bunch that accompanied the father to the patrol car?

A There was two.

Q Two. And Mrs. Benko also, was she along?

A Yes.

Q Did you accompany the squad as far as the car?

A I did.

Q Did you notice anything about your father's appearance that morning that indicated he wasn't normal?

A I did.

Q Just what was that, please?

A He was dog drunk.

Q I will ask you the same question as I did Mr. Edwards awhile ago. Do you think you have qualifications of judging whether your Dad was drunk or not?

A Well, I would say after seeing you that way for thirty years I ought to be qualified as an expert on it.

THE RESPONDENT: Well, that's all.

THE COURT: You may cross examine.

CROSS EXAMINATION

MR. BIVINS:

Q I will ask you, sir, what type of a uniform did you have on?

A A regular police uniform with the insignias, badge.

Q What police department was that uniform that made you a member of?

A I was with the Flint Township Police Department at that particular time.

Q And you would not have any jurisdiction or authority in the city of Flint. Is that correct?

A No. I was a—

Q Would you have any authority or juisdiction in the city of Flint?

A Yes.

THE RESPONDENT: I object to that line of questioning, Your Honor. He had authority of being in his father's house at any time that he wants.

A I was—yes. I had been a deputy Sheriff. I could go anyplace in Genesee County, which includes the city of Flint. As long as it remains a part of the county, I think.

Q All right. What is dog—what do you mean by the term dog drunk?

A I mean he was inebriated; drunk.

Q What do you mean?

A Stupid drunk.

Q We want to get to your term that you mean.

A I am telling yor he was stupid drunk.

THE RESPONDENT: Just—

MR. BIVINS: Just a minute.

THE RESPONDENT: Quit harrassing the witness. Look in the dictionary and see if you can find the term.

MR. BIVINS: He used the term.

THE COURT: I think the witness is trying to answer the question.

MR. BIVINS: All right.

THE COURT: Let him ask the question.

MR. BIVINS: All right.

Q (by Mr. Bivins) What is dog drunk?

A He was drunk. He was completely inebriated. He was sopped, pickled; any way you want to term—you want to use. A person when he is in a state of drunkeness.

Q Did he stagger going to the cruiser?

A He absolutely did. I walked right to the side of him.

Q Did the two officers have him by the arm?

A They did not.

Q To take him and put him in the cruiser?

A They did not.

Q On which side of the cruiser did he get in?

A He got in on the right hand side of it.

Q Who opened the cruiser door?

A Well, this would just be a conclusion. I don't remember.

Q Do you remember whether or not your father opened the door?

A No. He did not.

Q Where did he get in the cruiser?

A He got in the back seat.

Q Did he get in the back seat by himself?

A Well, I—I don't know whether he was assisted or not.

Q What if anything did you say to him after he got into the cruiser?

A Nothing that I can recall.

Q How many officers were in the back seat in the cruiser with your father?

A Well, there—this would only be a matter of deduction. There was one driving. I don't know whether the other one got in the back seat or not.

Q You were there, were you not, sir?

A I didn't—

Q You saw—

A I didn't make a mental note of it or anything else. All I know he was—

Q All you saw was your father was dog drunk?

THE RESPONDENT: Quit asking the witness—witness. You are getting out of line.

A Yes. I stipulated that he was dog drunk.

MR. BIVINS: I have no further questions.

THE COURT: You may step down, witness.

A Thank you.

(Witness excused.)

THE COURT: Any further witnesses, Mr. Stafford?

THE RESPONDENT: Pardon?

THE COURT: Do you want Lieutenant Burke back?

THE RESPONDENT: Yes, if you please.

MR. BIVINS: Lieutenant Burke.

FRITZ BURKE, a witness recalled to give further testimony, having previously been sworn continued to testify on his oath as follows:

CONTINUED CROSS EXAMINATION

THE RESPONDENT:

Q Lieutenant Burke, you have heard the statement of my son. There is a difference between your statements and his. I just wonder if the testimony of all the policemen is unreliable?

MR. BIVINS: I object to this, Your Honor.

THE RESPONDENT: Well, you go ahead and object. That's all you've got to do.

THE COURT: You may re-state the question, please.

Q (by the Respondent) I just asked, Lieutenant, if the distance between his testimony and my son, both members of the Police Department, might indicate that the testimony of all the police is unreliable.

MR. BIVINS: I object, Your Honor.

THE COURT: You may answer the question.

MR. BIVINS: The credibility is for the Court, and these are all questions of credibility.

THE COURT: He can comment on his own testimony

if he wishes. Do you have any further comments on your own testimony?

A Well, I told the truth. That's all I can tell.

Q (by the Respondent) Well, the other man swore that he told the truth also. So, it seems like a one man battle against City Hall.

THE RESPONDENT: I don't have anything more to ask you, sir.

THE COURT: You may step down.
(Witness excused.)

THE COURT: No further questions or testimony?

MR. BIVINS: No further testimony, Your Honor.

THE COURT: All right. The Court will reserve decision on this motion, or rather, on this hearing. I guess this is the Prosecutor's motion based on the praecipe that we have, and the question is to determine the voluntariness of the Defendant's confession pursuant to Court of Appeals of the State of Michigan, order being dated November 19 1965. I will prepare a written opinion and serve on all parties.

MR. BIVINS: Thank you, Your Honor.

(Whereupon at or about 11:34 o'clock in the forenoon Court was in recess.)

STATE OF MICHIGAN }
COUNTY OF GENESEE } ss.

I, Alfred G. Johnson, Official Court Reporter, Seventh Judicial Circuit of Michigan, do hereby certify that the foregoing and attached seventy-nine typewritten pages do constitute a full, accurate and complete transcript of the proceedings had and testimony taken in the above entitled cause, before the Honorable John W. Baker, Circuit Judge, on January 17, 1966.

Alfred G. Johnson /s/
ALFRED G. JOHNSON,
Court Reporter

Dated: April 15, 1966

January 20, 1966

Mr. Ronald L. Dzierbicki
Clerk of the Court of Appeals
Prudden Building
Lansing, Michigan

Dear Mr. Dzierbicki:

I am enclosing a copy of Decision as to Voluntary Nature of Confession. This matter was returned to this Court by Order dated November 18, 1965 No. 1228, Court of Appeals, State of Michigan, for hearing as to the facts and circumstances under which confession was obtained.

Very truly yours,
John W. Baker /s/
JOHN W. BAKER
Circuit Judge

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF GENESEE

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff vs. WILLIAM A. STAFFORD, Respondent	No. 18407 DECISION ON MOTION WHETHER CONFESSION OF RESPONDENT WAS VOLUNTARY

In this case the respondent William A. Stafford was tried before a jury, found guilty of 1st degree murder and sentenced to life in prison.

The matter was returned to this Court by an Order dated November 18, 1965, No. 1228 Court of Appeals of the State of Michigan for a hearing as to the facts and circumstances under which confession was obtained.

The Respondent appeared and represented himself at a hearing held January 17, 1966, at which time evidence was taken.

The evidence discloses that on date of the crime November 5, 1961, Lieutenant Richard Burke arrived at the Respondent's home in the City of Flint as shown by the transcript and the following took place:

"Q (by Mr. Bivins) Did you have occasion to go to 727 Fenton Road on that particular date?

A Yes, I did.

Q And do you recall approximately what time your arrived?

A About ten fifty A.M.

Q And did you have occasion to see a person by the name of William Stafford there?

A Yes, I did.

Q And did you have any conversation with him?

A Yes, sir.

Q And would you tell the Court the circumstances of that conversation?

A Well, I arrived at 727 Fenton Road and met two officers at the front door. And I walked in, and I observed Mr. Stafford sitting on the sofa in the front room, and in the bedroom just to the left of the living room were two people lying on the floor. And I asked Mr. Stafford what his name was, and he stated it was — what his name was. And I asked him what was the matter with those people in the other room, and he said "They are both dead. I killed them both with one bullet from that rifle standing over there by the door."

Q Now, that statement he made, was that voluntarily made prior to your having a chance to actually question him about it?

A Yes, sir. I —

Q Now, did you have occasion to observe the general demeanor of Mr. Stafford while — — —

This conversation took place prior to Respondent's arrest

and not at a time when he had been accused of any crime and as such can be considered a voluntary confession. The Court finds that the arrest occurred at the time the officers removed the respondent from his home to take him to the police station.

The transcript further shows that the Respondent did not request the services of an attorney at any time prior to nor during the taking of his statement given to Captain George Edwards as follows:

BY THE COURT:

"Q Was there anything mentioned about counsel whatsoever, Captain Edwards?

A Yes, sir. After Mr. Stafford's arraignment, to the best of my recollection, he informed me that he had spoken to I believe Attorney Grimes. I'm not positive that that was the name. This was on the occasion after his first arraignment; he had been in Municipal Court on arraignment.

Q Now, was there any such conversation prior to the arraignment, or in your remarks to the Defendant Mr. Stafford?

A No, sir.

Q Prior to your interrogation was any remark made by Mr. Stafford at any time prior to the arraignment about an attorney?

A No, sir.

MR. BIVINS: I have no further questions."

At the time the statement was given to Captain Edwards

he was advised of his rights as shown by the following excerpts:

"Q (by Mr. Bivins) Mr. Mason, would you read that exhibit, please (indicating)?

A Yes, sir. "Statement. This is a statement of William A. Stafford, male, white, sixty-seven years old, of 727 Fenton Road; statement being taken in conjunction with Murder Complaint Number 13256, of 11/5/61; statement questioning being conducted by Lieutenant George Edwards on 11/5/61, at 2:30 p.m., in the offices of the detective bureau, witnessed by Detective Louis Zyabo (?), taken in shorthand and transcribed by Edwin Mason, detective bureau reporter. Question: Mr. Stafford, we wish to take a statement from you regarding events that occurred in connection with the double shooting of William Howard and as yet unidentified white female at 727 Fenton Road —

KELLY GIRL: Will you slow down? Do you want me to take the statement down, or do you have a copy?

MR. STAFFORD: I have a copy. I guess it's the same thing.

THE COURT: Do you want to present those? Then we can receive that in evidence without reading it in the record.

MR. STAFFORD: Yes. That would be all right, Judge Baker. They are identifical.

THE COURT: All right. Thank you.

Q (by Mr. Bivins) Would you continue?

A Should I continue?

Q Yes. Please.

A "— — 727 Fenton Road, and which are reported on Complaint Number 13256. Any statement that you give us must be the truth to the best of your knowledge and recollection; it must be given freely and voluntarily without any force or threats or promises on our part, and it must be given by you with the — with the realization that you are under arrest to this department on a charge of murder which is a felony under the State laws of Michigan, and that anything that you say in this statement may be used for or against you if this matter should come to trial in criminal court. Knowing these things to be so will you give us a statement?

Answer: Yes.

Question: Will you state your name, age and address, please?

Answer: Well, my name is William A. Stafford, I am sixty-seven years old, I live at 727 — — — —"

The great weight of the evidence submitted by the people at the hearing was that the Respondent may have had something to drink prior to his arrest, but that he was sober, coherent and in possession of all of his faculties from the time the City police officers entered his home and thereafter.

The Court is convinced beyond any reasonable doubt that the confession of respondent received in evidence at the trial of this case was voluntary on his part and that there is no basis either legal or factual, on which to set aside the conviction.

John W. Baker /s/
JOHN W. BAKER
Circuit Judge

DATED: January 19, 1966.

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Lansing, on the 14th day of July in the year of our Lord one thousand nine hundred and sixty-six.

Present the Honorable
THOMAS GILES KAVANAGH
Presiding Judge
LOUIS D. McGREGOR
TIMOTHY C. QUINN
Judges

People of the State of Michigan,
Plaintiff-Appellee

vs

No. 1800

William Stafford,
Defendant-Appellant

In this cause a motion to affirm the judgment of the trial court and deny the appeal heretofore filed herein, having been filed, and it appearing to the Court from an examination of the record that the trial court found after a proper evidentiary hearing that the confession of the defendant which was admitted in evidence at the trial was voluntarily made,

IT IS ORDERED that the appeal be and the same is hereby DISMISSED and the judgment of the trial court is affirmed.

STATE OF MICHIGAN—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court

in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 18th day of July in the year of our Lord one thousand nine hundred and sixty-six.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF GENESEE

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff vs. WILLIAM STAFFORD, SR., Defendant	No. 18407 OPINION ON MOTION FOR NEW TRIAL

The Defendant was convicted in this Court after a jury trial on April 16, 1962 of First Degree Murder and is presently serving a life term.

Defendant raises several issues in a motion for a new trial.

DEFENDANT'S ISSUES:

A. Defendant claims to have been held incommunicado and denied advice of counsel for a protracted period of

time and was denied counsel at the time of his arraignments in the Municipal Court for the City of Flint, November 6, 1961 and November 13, 1961, although he requested an opportunity to retain counsel.

It is apparent from the affidavits on file that the only persons who sought to visit with defendant and were denied such visitation were his estranged wife, Cornelia Stafford and his first cousin, Elzie Sullivan. The affidavit of Cornelia Stafford states that Robert Grimes, an attorney, went to the jail and demanded and got visiting privileges for her. Defendant in his affidavit indicates that when he appeared in Court on November 15, 1961, although he was then without counsel, he had been advised to either be represented by counsel at this hearing or to waive examination.

It does not appear that an examining Magistrate is required to not hold a preliminary examination in a capital case just because a defendant desires to waive examination. The People may request that an examination be held. See Michigan Criminal Law and Procedure, Vol. 1 par. 297, pg. 351.

Cases cited by defense counsel, Miranda v. Arizona (1966) 384 US 436 would not apply since it is available to only persons whose trials had not begun as of June 13, 1966. Escobedo v. Illinois (1964) 378 US 478 which established the right to advice as to remaining silent and to be advised of the right to counsel does not apply. See People v. Fordyce 378 Mich. 208.

As to questions of the voluntary nature of any statements made by the defendant prior to having retained counsel, such were reviewed and upheld by the Michigan Court of Appeals on July 14, 1966 and conviction was upheld.

DEFENDANT'S ISSUES:

B. Because Defendant was denied representation and advice of counsel at the time of examination held in said Municipal Court on November 15, 1961, although his desire to be so represented or to waive examination is clearly established by reference to pages 4, 45 and 46 of the transcript made of the proceedings on that date.

Defendant counsel states in his own brief that Attorney Robert Grimes did get to see Defendant Stafford and it is apparent from Defendant Stafford's affidavit that he was advised by some one (probably Mr. Grimes) to waive the preliminary examination.

Defendant was granted one adjournment for the purpose of securing an attorney, but did not do so.

At no time thereafter until now was the matter of preliminary examination raised. Counsel appointed for the Defendant in Circuit Court at his arraignment before Judge Donn D. Parker, did not request a remand for further examination.

"No information shall be filed against any person for any offense until such person shall have had a preliminary examination therefor, as provided by law before a Justice of the Peace or other examining magistrate or officer, unless such person shall waive his right to such examination. If any person waives his right to such examination without having the benefit of counsel at the time and place of the waiver, upon proper and timely application by such person or his counsel, before trial or plea of guilty, the Court having jurisdiction of the cause, in its discretion may remand the cause to the Magistrate for preliminary examination."

Pub. Acts 1957 No. 38, Stat. Ann. 28.982, CL 1948 76742.

The case of Hamilton v. Alabama, 368 US 52, 7 L Ed. 2d 114 82 S. Ct. 157 does not appear to apply to arraignments before the examining magistrate since it is clear in Michigan law that even if Defendant pleads guilty at such hearing, the same would be treated as merely a waiver of preliminary examination. Also, at Defendant's arraignment in Circuit Court which is a critical stage of the proceedings, and where a plea is necessary, the Defendant was represented by Attorney Jerome Winegarden.

The case of White v. Maryland 373 US 59, 10 L.Ed. 2d 193, 83 S. Ct. 1050, cited by Defendant can be distinguished. In that case the Defendant entered a plea of guilty before the magistrate when he was not represented by counsel and the plea was later introduced in evidence at the trial of the case. This did not happen in the instant case. Defendant did not plead guilty before the magistrate.

The White case Supra contains this language at page 194, of 10 L. Ed. 2d 193:

"Whatever may be the normal function of the "preliminary hearing" under Maryland law, it was *in this case* as "critical" a stage as arraignment under Alabama law. For petitioner entered a plea before the magistrate and that plea was taken at a time when he had no counsel."

The Court finds no prejudice to Defendant as a result of the proceedings in the Municipal Court.

The holding of Judge Stewart Newblatt in the case of People v. Charles Lee Woods, Genesee Circuit Court No. 18059, is also distinguished from the facts in the instant

case since a request for remand at the Circuit Court level was denied in the Wood case.

DEFENDANT'S ISSUES:

C. Because Defendant was denied a fair opportunity and reasonable time in which to retain counsel and was obliged to pay in full for an attorney arbitrarily appointed by the Court on the basis that Defendant was indigent and unable to obtain counsel.

On November 27, 1961, Circuit Judge Donn D. Parker conducted the arraignment of Defendant. After examining Defendant as to his financial ability at the time the Court concluded that Defendant was indigent and appointed Attorney Jerome Winegarden to represent Defendant. Attorney Winegarden then proceeded to represent the Defendant through his Circuit Court trial and through an Appeal to the Michigan Court of Appeals. At no time does it appear in the record that Defendant was dissatisfied with the services of Mr. Winegarden, at least not during the trial and appeal.

The case of US v. Harry Balk, 318 Federal Reporter 2nd Series, pg. 288 does not apply here. In that case, the Defendant expressed his dissatisfaction with counsel before trial and his request for a delay to obtain other counsel was denied.

In the Balk case, Supra, at pg. 291, is the following:

"Therefore, the question boils down to whether appellant Balk had a fair opportunity and reasonable time to select counsel of his own choice.

While the history of the case heretofore set out indicates

that appellant Balk wavered to some extent as to whether he might go forward with Mr. Barris or accept Mr. Walker, we believe that the record fairly reveals that the definite position of Mr. Balk was that he desired Mr. Louisell to try his case and if not, that he should have more time to select a lawyer that he had confidence in."

Defendant Stafford was before Judge Parker on November 20, 1961. He stated that he was indigent and desired an attorney appointed. The arraignment was adjourned to November 27, 1961 and defendant took the stand and testified as to his need for appointed counsel. Thereafter Judge Parker appointed counsel for him. Apparently Defendant was later able, financially, to pay his attorney and did so.

The Court does not find any breach of discretion or prejudice to the Defendant arising from the procedure followed concerning appointment of counsel.

The Court finds that there are no errors in the record which would require a new trial and that Defendant's Motion for New Trial should be denied.

Prosecutor may submit an appropriate written order of denial.

John W. Baker /s/
JOHN W. BAKER
Circuit Judge

DATED: April 19, 1968.